United States Court of Appeals for the Second Circuit



SUPPLEMENTAL APPENDIX

76-3025 76-1189

United States Court of Appeals

FOR THE SECOND CIRCUIT

Decket Nos. 76-3025, 76-1189

VIRGIL ALESSI.

Petitioner-Defendant.

-against-

HONORABLE DUDLEY B. BONSAL,

UNITED STATES OF AMERICA,

-against-

VIRGIL ALESSI,

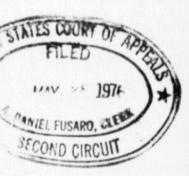
Petitioner-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

SUPPLEMENTAL APPENDIX FOR APPELLANT

NANCY ROSNER,
Attorney for Appellante
401 Broadway
New York, New York 19013
(212) 925-8844

BPS



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WHITED STATES HISTORICE COURTS EASTIMA DISTRICT OF THE A YORK

to a minimize was and hop town 1/2861 72 CR. UNITED STATES OF AMERICA ... at all a stand or the se with the ... Inpromete . States Called . " 21 U.S.C. 173 ATTROUT LOUIS, SR., of me ' 21 U.S.C. 174 WILLIAM BUFF, 18 U.S.C. 2 21 U.S.C. Ob1 MEHO FAZIO, CHARLARD SPENDING ANA Mojo, - - 22 7, William 21 U.S.C. 846 DATESY LOCKA. when to statedly were notice that state, the early matter led VINCENT PAPA, VIDIL ALBSI, a men or aborased before to the following of a section to PAULA SILVISTRI, SALVATORE GRAZIATO, BITHOIR LORDA, JR., C. C.A. Ma(a)(a) and Strictical(b)(c) or these 22, values THE MALLACIS, EDGAR LEDGARD. Alling IY Passer 2200 000 MERRY UVICIO. SALLY PATOLAJA, JOSEM CESAMO a/k/a Joo Mrt, " THIT has to attach the objects thereof, the BALLH LORIA, the in production to the Distance Plots on the Toy and FREEDI DI ANATTO, JACQUILLIE CARLIER, and The second of JOHN HOE

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A to the man with the same On or about and between the let day of April, 1967 and the 6th day of August, 1971, both dates being approximate and includive, within the Eastern District of New York, the defendents ANTHONY LORIA, SR., WILLIAM NUFF, MINO FAZIO, GLETARD SPECTOMA A/C/A MENIO, DARRY LORTA, VEICHIT PAPA, VIRGIL ALEESI, PAULA SILVESTRI, SALVATORE GRAZICHO, ARTHONY LORIA, JR., IKE WILLIAMS, EDGAR LECCIARD, ANTHOIY PASSIND, HEIRY UVEND, SALLY PAICLEIA, JOSEPH CERARIO a/k/a Joe Dirt, RALPH LORIA, FRANK DI AMATTO, JACQUELLINE GARRETER, JOHN DOE, being a . white male known only as MICK FASAMO, and others to the grand jury unknown, vilfully, unlawfully and knowingly did combine, communite, confederate, and agree together and with each to violate prior to May 1, 1971, Sections 173 and 17% of Title 21, United States Cods and on and after May 1, 1971, to Molato Sections 812, 841(a)(1), 841(b), (1) (A), 951 (a)(1) and 952 of Title 21, United States Code.

1. It was a part of the said conspiracy that prior to May 1, 1971, the defendants unlawfully, wilfully and imputingly would receive, conceal, buy,

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1971, the said defendants unlaufully, wilfully and knowingly would distribute and pendens with intent to distribute a schedule I marcotic drug controlled substance, the exact amount thereof being to the Grand Jury unknown, in whelation of Sections 512, 854(a)(1) and 654(b)(1)(A) of Title 21, United States Code.

Dillowing overt acts were consisted in the Eastern District of New York and electhore:

of Lal. Co or about April 1, 1987 ANDERS JOSHIN PARADICS and the defendant NIBS PARADICS are presented by 1/3 of a billogram of herein from the .p.,

1/2 bilogram of horoin from the defendant ANTHONY LORIA, SR., in the Eastern District of New York;

23. On or about December 25, 1968, ANDELO JOSEMI PARADISO delivered : approximately 1/2 kilogram to the defendant WILLIAM MUFF, in the Bronx,

5. On or about January 15, 1959, the defendant JACQUIJINE GARLIER received approximately 1/h - 1/2 ktdpgram of heroin from ANGELD JOSEPH PARADISO, in New York, New York;

6. On or about September 15, 1970, the defendant EDGAR LECHARD received approximately 1 hilogram of herein from ANGERO JOSERI PARADISO, in Bronx, New York;

or the interpolation of the last

-)-

7. On or about January 2, 1969, the defendant GLEIARD SPEAKINI, a/k/a
MeJo, received approximately 1/8 idlogram of heroin from ANGELO JOSEPH
PARAMISO, in Break, New York;

8. On or about Hovember 3, 1969, the defendant JOHN DOE, a winte male known only as NICK PASANO, received approximately 1/8 kilogram of heroin from ANORNO JOHNAN PARADISO in Errors, New York;

9. On or about January 5, 1969, the defendant VENCENT PAPA delivered approximately one kilogram of herein to the defendant ANTHONY LONIA, SR., in the Eastern District of New York;

ANTHONY PROMERO delivered becoin to ANTHONY LORIA, SR., in the Eastern District of New

11. On or about January 1, 1959, the defendant Calvarone Chazzano kept in his house approximately 1/1, Milogram of Mercin, 2g the Eastern District of H. orbit

12. On or about January 1, 1970, the defendant ATHICHY LORIA, JR., kept in his house a quantity of barein, in the Eastern District of New York;

13. On or about Jamstry 1, 1970, the defendant SALLY PARALLA, in the Bronx, New York, received approximately 1/8 kilogram of heroin from ANGELO JOSEPH PARAMERO:

The Ca or about July 18, 1971, the defendants RALFH LOWIA, and ANTHONY LORIA, SR., not with ANORNO JOSTPH PARADICO in the Enstern Eastrict of York;

15. On or about July 29, 1971, the defendant WILLIAM EMFF had a conversation with AMBELO JOSEPH PARADISO, in the Break, New York.

(Title 21, United States Code, Sections 173 and 174 Title 21, United States Code, Sections 846 and 963)

COURT TIO

THE GRAND JURY FURNIER CHARDES:

On or about the 18th day of July, 1971, in the Eastern District of New York, the defendants RALES LONGA, APPRICAY LONGA, SR., and DANEY LONGA unlawfully, wilfully, and knowingly did distribute and possess with intent to distribute a Schodule I narcotte drug controlled substance, to wit, approximately 1.7 grams of herein.

OTITIO 21, United States Code, Sections 812, Chi(a)(1) and Chi(b)(1)(A) (Vitto 18, Vitted States Code, Section 2)

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Assertatives (

COURT TITLE

THE GRAID JURY PURTRIER CHARGES!

On or about the 29th day of July, 1971, within the Rastern District of Now York, the defendant WILLIAM HUFF, unlawfully, wilfully, and knowingly did distribute and persons with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one gram of herein.

of (Title 21, United States Code, Sections 812, 844(a)(1) and 844(b)(1)(A) directed to the percent as write a country rough

THE GRAND JURY FURTHER CHARGES:

On or about the 6th day of August, 1971 within the Eastern District of New York, the defendant WILLIAM HUFF unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled ... substance, to wit, approximately 5 owners of herein.

(Title 21, United States Code, Sections 812, 811(a)(1) and 841 (b)(1)(A)

AFFIDANT : A TRUE BILL MAL CURVICED

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UNITED STATES ATTORISY	, he served a bile ergy of the annexed
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UNITED STATES DISTRICT COURT EASTERN DISTIGCT OF HEM YOUR

UNITED STATES OF AMERICA

21 U.S.C. 1/3 21 U.S.C. 174

21 U.S.C. 845

433

VINCENT PAPA VIRGIL ALEGSI ROCCO LYANG ALSTA DIGHT RAHIEU,

Total Defendants

THE GRAID JURY CHARGES:

to controls the fire Court off

on or about the lat day of March, 1971 and the 18th day of December, 1971, both dates being approximate and inclusive, within the Eastern District of New York, the defendants VINCERT PAPA, VIRGIL ALESSI, ROCCO EVANGELISTA and DANNY RAMIER, and others to the grand jury unknown, wilfully, unlawfully and knowingly did combine, conspire, confederate and agree together and with each other to violate prior to May 1, 1971, Sections 173 and 174 of Title 21, United States Code and on and after May 1, 1971, to violate Sections 812, 841 (a) (1), 841 (b) (1) (A), 951 (9) (1) and 952 of Title 21, United States Code.

1. It was a part of the said compgiracy that prior to May 1, 1971, the defendants unlawfully, wilfully and knowingly would receive, conceal, buy, coll, and facilitate the transportation, concealment and male of a quantity ofnarcotics drugs, to with horoin, the exact arount thereof being to the Grand Jury unknown, efter the said narcetic drugs had been imported and brought into the United States in violation of Sections 173 and 174 of Title 21, United States Code; Total Park to The Think to The Wal

2. It was further a part of caid conspiracy that on and after May 1, 1971, the and defendants unlimifully, wilfully, and knowingly would distribute and possess with intent to distribute a Schodule I narcotic drug controlled substance, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 312, 841 (a) (1) and 841 (b) (1) (A) of Title 21, United States Codo.

In pursuance of said compliancy and to effect the objects thereof, the following evert note were cornitted in the Eastern District of New York and electhors:

- 1. On or about March 1, 1971, in Queens in the Enstern District of New York, Stanton Garland purchased a quantity of heroin from the defendant DANNY RUNNER.
- 2. Un or about the 30th day of March, 1971 in Queens in the Eastern District of New York, the defendant DANNY RAHIDM delivered a quantity of herein to Stanton Carland.
- 3. On or about the 15th day of April, 1971, in Queens in the Distern District of New York, the defendant DANNY RANKING delivered a quantity of herein to Stanton Carland.
- h. On or about the 25th day of April, 1971, in Queens in the Eastern Metrict of New York, the desendent DRMY REMIEW delivered a quentity of herein to Stanton Carland.
- 5. On or about the let day of June, 1971, in the Eastern District of New York, Stanton Garland and the defendance, DANKY RUHLER, VINCENT PAPA, and VINSUL AUGSI had a conveniation.
- 6. On or about the lat day of Au st, 1971 in the Eastern District of New York, Stanton Carland not with and had a conversation with the defendants DANNY RANGELLY, ROCCO EVENGELISTA, VINCENT PAPA and VINCEL ALIESI.
- 7. On or about the 6th day of September, 1971, in the Eastern District of New York, Stanton Carland and the defendants DANNY RAHLER, VIRGIL ALESSI and ROCCO EVALUEBLESTA not and had a convergation.
- 8. On or about the 13th day of December, 1971, in Mex York City, Stanton Carland and the defendants DAVLY RAMERI and ROCCO SYMBOLICIA had a conversation.
- 9. On or about the 14th day of December, 1971 in the Eastern District of New York, the defendant EOCCO EVALUATION delivered a quantity of herein to Stanton Carland.

(Title 21, U.S.C., Sections 173 and 174)
(Title 21, U.S.C., Sections 846 and 953)

A TRUE BILL

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ENTIED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

FILED IN CLERK'S OFFICE U. S. DISTRICT COURT LD. N.Y.

× 0CT 2 - 1972 ×

UNITED STATES OF AMERICA

-against-

district.

VIRGIL ALESSI,

HECONOLIAMO,)OV

REMEDICAMEN, DOV

SALLY ANN PATOELIA,

JOSEPH CESARIO,

JOSEPH CESARIO,

JOSEPH MENER, JOV

HENRY UVINO,

Defendants,

P.M. SUPERSEDING INFORMATION

HALLAM

Crim. No.

Title 21, U.S.C., 841 (a)(1)

Title 21, U.S.C., 841 (b)(1)(a)

Title 21, U.S.C., 846

72CR1133

THE UNITED STATES ATTORNEY CHARGES:

COUNT ONE

On or about and between the 1st day of April, 1969, and the 18th day of December, 1971, both dates being approximate and inclusive, within The Control of New York, the defendants VIRCL ALESSI and others, Shilly April 1969, Tollier Control of New York, the defendants VIRCL ALESSI and others, Shilly April 1969, Tollier Control of New York and Approximate April 1969, and knowingly did combine, consider the confederate, and

agree together and with each other to violate Section 841(a)(1) and 841(b)(1)(a) of Title 21. United States Code.

1. It was a part of said conspiracy that or and after May 1, 1971, the said defendants knowingly and intentionally weal-distribute and possess with intent to distribute and dispense a Schedule I arcotic drug controlled substance, the exact amount thereof being to the CradeJury unknown, in violation of Sections 841(a)(1) and 841(b)(1)(a) of Title 21, United States Code.

OVERT ACTS

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Easten District of New York and elsewhere:

- 1. On or about the 1st day of June, 1971,in the Eastern District of New York, Stanton Garland and the defendant VIXGENALESSI had a conversation.
- On or about the 1st day of August, 1971 in the Eastern District of New York, Stanton Garland met with and had a commisation with the defendant VIRGIL ALESSI.

Ex D"

- 3. On or about the 8th day of September, 1971, in the Eastern District of New York, Stanton Garland and the defendant VIRGIL ALESSI met and had a conversation.
- 4. On July 8, 1971, the defendant VIRGIL ALESSI possessed and delivered to Anthony Loria, Sr., approximately 35 ounces of heroin in the Eastern District of New York.
- 5. On or about and between May 1, and May 31, 1971, the defendant HENRY UVINO purchased approximately 8 ounces of heroin from Anthony Loria, Sr.
- 6. On or about and between May 1, 1971, and May 31, 1971, the defendant HENRY UVINO purchased approximately 2 ounces of heroin from Anthony Loria, Sr.
- 7. On or about January 15, 1969, the defendant JACQUELINE GARDNER received approximately 1/4 1/2 kilogram of heroin from Angelo Joseph Paradiso, in New York, New York.
- 8. On or about September 15, 1970, the defendant EDGAR LEONARD received approximately 1 kilogram of heroin from Angelo Joseph Paradiso, in Bronx, New York.
- -9. On or about January 1.-1970, the defendant SALLY PAIOLLIA, in the Bronx, New York, received approximately 1/8 kilogram of heroin from Angelo Joseph Paradiso.

UNITED STATES ATDRNEY

Eastern District of New York

1	UNITED STATES DESTRICT COURT A 9
2	EASTERN DISTRICT OF NEW YORK
3	x
4	UNITED STATES OF AMERICA,
. 5	Plaintiff,
6	- against - (72 CR 473)
7	WILLIAM HUFF, GLENARD SPEARMAN, VIRGIL ALESSI, ANTHONY PASSERO;
8	HENRY UVINO, SALLY PAIOLLIA, INCLEAS COURT ED. N.Y.
9	ROCCO EVANGELISTA, DANNY PANTERI, NOV 19 1974
10	Defendants.
11	X
12	
13	United States Courthouse Westbury, New York
14	
15	October 2, 1972 / 10:00 A.M.
16	
17	Before:
18	HON: ANTHONY J. TRAVIA, U. S. D. J.
19	
20	
21	
22	(PLEA AND SENTENCE OF VIRGIL ALESSI)
23	I hereby cortify that the foregoing is
24	strue and accurate
25	ACTING OFFICIAL COURT REPORTER
	Ex "B" Official Court Reporter

APPEARANCES:

ROBERT A. MORSE, U.S. ATTORNEY

BY: JAMES DRUKER, AUSA

LENEFSKY, GALLENA, MOSS & HOFFMAN, ESQS. Attorneys for defendant 30 Broad Street, N.Y., N.Y. 10004 BY: GINO GALLINA, ESQ.

THE CLERK: Criminal cause for trial, U.S.A. v. William Huff, et. al.

THE COURT: This has to be docketed, as you know, with a new docket number.

All right. Mr. Druker, it is your turn.

MR. DRUKER: Your Honor, I believe we have an offer of a disposition from the defendant, Virgil Alessi as to a superceding information which we have just handed up to the Court.

MR. GALLINA: Your Honor --

THE COURT: Just a minute.

(pause)

THE COURT: Yes.

MR. GALLINA: Your Honor, the defendant, after consulting with md offers to withdraw his previously entered plea of not guilty --

THE COURT: There isn't a plea on this one. There is a case pending, 72 CR 473 and there's a number of other cases but it is my understanding, Mr. Druker, that you are handing up a superceding information.

MR. DRUKER: That is correct, your Honor.

MR. GALLINA: The defendant is going to waive indictment.

I will come to that in just a moment.

Mr. Alessi, didyou receive a copy of this superceding information?

DEFENDANT ALESSI: Yes.

THE COURT: You have seen it?

DEFENDANT ALESSI: Yes.

THE COURT: You understand what it means?

DEFENDANT ALESSI: Yes.

THE COURT: You understand that a superceding information takes the place of an indictment and an indictment is a charge handed down by a Grand Jury after deliberation?

DEFENDANT ALESSI: Yes.

THE COURT: Do you understand that a superceding information is a charge made against you by the United States Attorney?

DEFENDANT ALESSI: Yes.

THE COURT: And do you understand that if you sign a waiver of indictment you waive the right to have your matter presented to a Grand Jury and . agree to be proceeded against by way of superceding information, by way of the United States Attorney? DEFENDANT ALESSI: Yes sir.

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24 25 or may not indict.

DEFENDANT ALESSI: Yes sir, I know that.

THE COURT: You are willing to waive that and be accused by the United States Attorney with a superceding information?

DEFENDANT ALESSI: Yes.

THE COURT: And it is your desire to sign a waiver of indictment in this case?

DEFENDANT ALESSI: Yes sir.

THE COURT: Sign it.

You witness it, counsel.

MR. GALLINA: Yes sir.

THE COURT: Is this zero to fifteen?

MR. DRUKER: Yes.

THE COURT: Plus a minimum of three years special parole.

Does he know that?

MR. DRUKER: Three years special parole.

THE COURT: Does he know that?

MR. GALLINA: Yes, we discussed it.

THE CLERK: The waiver has been signed and witnessed, your Honor.

THE COURT: Mr. Alessi, this is your signature,

14 2 and Mr. Gallina, this is your signature? 3 DEFENDANT ALESSI: Yes. 4 MR. GALLINA: Yes. 5 THE COURT: Received. 6 Now, Mr. Alessi, how do you plead on this 7 superceding information? 8 DEFENDANT ALESSI: Guilty, your Honor. 9 THE COURT: Guilty. 10 DEFENDANT ALESSI: Yes. 11 THE COURT: How old are you? 12 DEFENDANT ALESSI: Forty. THE COURT: Are you married? DEFENDANT ALESSI: Yes. THE COURT: Do you have any children? DEFENDANT ALESSI: Yes sir. THE COURT: How far did you go in school? DEFENDANT ALESSI: Two years of high school, your Honor. THE COURT: Have you been in a hospital for any reason in the last couple of years? DEFENDANT ALESSI: Last week. THE COURT: For what?

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DEFENDANT ALESSI: Back injury.

THE COURT: When did you receive it?

il.

DEFENDENT ALESSI: I have had it for about

THE COURT: Were you ever in a mental institution?

DEFENDANT ALESSI: No sir.

THE COURT: There is no language barrier --

DEFENDANT ALESSI: No sir.

THE COURT: There is nothing in here you don't understand and you understand me; is that right?

DEFENDANT ALESSI: Yes sir.

THE COURT: Before considering your plea or accepting it you must be informed of the charge.

Then, I will ask you questions.

the first day of April, 1969, and the 18th day of September, 1971, both dates being approximate and inclusive, within the Eastern District of New York, the defendant Virgil Alessi, Ike Williams, Edgar Leonard, Sally Ann Paiollia, Joseph Cesario, Jacqueline Gardner, Henry Uvino, Anthony Loria, Sr., William Huff, Anthony Loria, Jr., Ralph Loria and others wilfully, unlawfully and knowingly did combine, conspire, confederate and agree together

and with each other to violate Sections 841(a)(1) and 841(b)(1)(a) of Title 21, United States Code.

1. It was part of said conspiracy that on and after May 1,1971 -- are you bringing this into the new statute, Mr. Druker?

MR. DRUKER: Yes, your Honor.

that on and after May 1, 1971, the said defendants knowingly and intentionally would distribute and possess with intent to distribute and dispense a Schedule I narcotic drug controlled substance, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 841(a)(1) and 841(b)(1)(a) of Title 21, United States Code.

The overt acts charges that:

In pursuance of said conspiracy and to affect the objects thereof, the following overt acts were committed in the Eastern District of New York and elsewhere:

- 1. On or about the first day of June, 1971, in the Eastern District of New York, Stanton Garland and the defendant Virgil Alessi -- that's you -- had a conversation.
 - 2. On or about the first day of August, 1971,

in the Eastern District of New York, Stanton Garland met with and had a conversation with the defendant Virgil Alessi -- and that's you.

- 3. On or about the 8th day of September,
 1971, in the Eastern District of New York, Stanton
 Garland and the defendant Virgil Alessi met and
 had a conversation.
- 4. On July 8, 1971, the defendant Virgil Alessi possessed and delivered to Anthony Loria, Sr., approximately 35 ounces of heroin in the Eastern District of New York.
- 5. On or about and between May 1 and May 31, 1971, the defendant Henry Uvino purchased approximately 8 ounces of heroin from Anthony Loria, Sr..
- 6. On or about and between May 1, 1971, and May 31, 1971, the defendant Henry Uvino purchased approximately 2 ounces of heroin from Anthony Loria, Sr.
- 7. On or about January 15, 1969, the defendant Jacqueline Gardner received approximately 1/4 to 1/2 kilograms of heroin from Angelo Joseph Paradiso, in New York, New York.
- 8. On or about September 15, 1970, the defendant Edgar Leonard received approximately 1 kilogram

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of heroin from Angelo Joseph Paradiso, in Bronx, New York.

9. On or about January 1, 1970, the defendant Sally Paiollia, in the Bronx, New York received approximately 1/8 kilograms of heroin from Angelo Joseph Paradiso.

Now, Mr. Alessi, you heard me read this superceding information and the count?

DEFENDANT ALESSI: Yes.

THE COURT: I am going to ask you, is it true, what is here in count 1; that between those dates, 1969 to 1971 you, with all those others named, that you heard me call out, wilfully, knowingly and unlawfully did combine, conspire and confederate together to violate those Sections of law?

DEFENDANT ALESSI: Yes, your Honor.

THE COURT: You met with them?

DEFENDANT ALESSI: With the people that I said I met with, like it says on there, yes, your Honor.

DEFENDANT ALESSI: No.

THE COURT: Do you know Edgar Leonard?

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DEFENDANT ALESSI: No.

THE COURT: Do you know Joseph Cesario?

DEFENDANT ALESSI: No.

THE COURT: Do you know Anthony Loria, Sr.?

DEFENDANT ALESSI: Yes.

THE COURT: Do you know Huff?

DEFENDANT ALESSI: No.

THE COURT: How about Loria Jr. and Ralph Loria?

DEFENDANT ALESSI: I met them.

THE COURT: You don't know the others?

DEFENDANT ALESSI: No.

THE COURT: You didn't know about their doing certain acts?

DEFENDANT ALESSI: I knew there was other people but I don't know their names.

THE COURT: But you knew there were others involved and you were part of it?

DEFENDANT ALESSI: Yes.

THE COURT: And you confederated and conspired with them through Loria?

DEFENDANT ALESSI: Yes.

THE COURT: So, you were part of the conspiracy to violate the narcotics laws?

DEFENDANT ALESSI: Yes sir.

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THE COURT: You knew what you were doing?
DEFENDANT ALESSI: Yes.

THE COURT: Let's get down to the overt acts.

You told me that you didn't know Stanton

Garland --

DEFENDANT ALESSI: I didn't say that.

THE COURT: You're right. I didn't mention him earlier.

You do know him and had a chat with him in June of 1971 and again in August, 1971?

DEFENDANT ALESSI: Yes.

THE COURT: In the Eastern District of New York?

DEFENDANT ALESSI: Yes.

THE COURT: In Brooklyn or Queens?

DEFENDANT ALESSI: Yes sir.

THE COURT: You had a conversation with him?

DEFENDANT ALESSI: Yes.

THE COURT: In these conversations you were not passing the time of day, were you?

DEFENDANT ALESSI: No.

THE COURT: You were making a date for the illicit transfer of drugs; right?

DEFENDANT ALESSI: Right.

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THE COURT: On September 8, 1971, you met with Stanton Garland?

DEFENDANT ALESSI: Yes, your Honor.

THE COURT: And then on July 8 of 1971 you had and delivered to Anthony Loria, Sr., approximately 35 ounces of heroin?

DEFENDANT ALESSI: Yes.

THE COURT: Do you use drugs yourself?

DEFENDANT ALESSI: No sir.

THE COURT: Now, in your talks with Loria did you know that he gave Uvino or sold Uvino drugs?

DEFENDANT ALESSI: No.

THE COURT: But you knew Loria was selling drugs?

DEFENDANT ALESSI: Yes.

THE COURT: And the same thing about Jacqueline Gardner?

DEFENDANT ALESSI: Yes.

THE COURT: Did you know Paradiso?

DEFENDANT ALESSI: I met him.

THE COURT: He was part of this?

DEFENDANT ALESSI: Yes, your Honor.

THE COURT: Did you know that he sold Jacqueline Gardner --

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DEFENDANT ALESSI: No sir --

THE COURT: (continuing) Heroin?

DEFENDANT ALESSI: No sir.

THE COURT: But you knew he was dealing with heroin; right?

THE DEFENDANT: Yes sir.

THE COURT: And do you know that on September 15, 1970, this fellow, Paradiso, sold heroin to Edgar Leonard?

DEFENDANT ALESSI: I don't know it.

THE COURT: But you knew Paradisc was dealing in heroin, did you not? I ask you that again.

DEFENDANT ALESSI: Yes sir.

THE COURT: And the defendant, Sally Paiollia, received heroin in the Bronx from Paradiso -- you didn't know the actual date but you knew he was dealing in it?

DEFENDANT ALESSI: Yes sir.

THE COURT: There is no question in your mind about your involvement in this conspiracy to violate those laws dealing with heroin; right?

DEFENDANT ALESSI: Yes sir.

THE COURT: And you understand what this says? DEFENDANT ALESSI: Yes sir.

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THE COURT: This is an information.

DEFENDINT ALESSI: Yes sir.

THE COURT: And you are willing to waive, as you told me, and you did sign a waiver of indictment and are willing to be proceeded against by way of this superceding information?

DEFENDANT ALESSI: Yes sir.

THE COURT: Did you talk it over with your lawyer, Mr. Gallina?

DEFENDANT ALESSI: Yes.

THE COURT: He told you what you are in for if you plead guilty, didn't he?

DEFENDANT ALESSI: Yes sir.

THE COURT: And you talked to him about this case and after discussing it, he advised you to plead guilty here?

DEFENDANT ALESSI: Yes.

THE COURT: And you are satisfied with his advice?

DEFENDANT ALESSI: Yes sir.

THE COURT: After talking to him you figure you haven't much of a chance in a trial; is that right?

DEFENDANT ALESSI: Yes sir.

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THE COURT: So, you know what you are doing and you are satisfied with his advice?

DEFENDANT ALESSI: Yes.

THE COURT: Is he your retained attorney, not Court appointed?

DEFENDANT ALESSI: Yes, he is retained.

THE COURT: Do you understand that if you go to trial and do not waive indictment you have the right to a speedy and public trial by an impartial jury?

DEFENDANT ALESSI: Yes.

THE COURT: And that you would have the right, if you went to trial, to compulsory process to obtain witnesses in your behalf and be confronted by witnesses against you?

DEFENDANT ALESSI: I have heard it, yes sir.

THE COURT: Do you further understand that if you, plead guilty to the superceding information the Court has the power to and may impose a prison sentence of up to 15 years?

DEFENDANT ALESSI: Yes sir.

THE COURT: What is the fine on this -- twenty-five thousand dollars?

MR. DRUKER: I think it is twenty-five

. thousand dollars.

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THE COURT: And do you understand that you are subject to a fine of up to twenty-five thousand dollars?

DEFENDANT ALESSI: Yes sir.

THE COURT: Or both?

DEFENDANT ALESSI: Yes sir.

THE COURT: You know that?

DEFENDANT ALESSI: Yes sir.

imposed here the Court must add on to whatever the sentence may be a special period of parole for a minimum of three years? Do you understand that?

DEFENDANT ALESSI: Yes sir.

THE COURT: After hearing your rights you still desire to plead guilty?

DEFENDANT ALESSI: Yes sir.

THE COURT: Has anyone made any promises of any kind or inducements of any kind to you for your plea of guilty?

DEFENDANT ALESSI: No sir.

THE COURT: This plea of guilty is being made by you voluntarily?

DEFENDANT ALESSI: Yes sir.

THE COURT: And you are pleading guilty because you in fact did commit each and every act as charged in this superceding information to which you are pleading guilty?

DEFENDANT ALESSI: Yes.

THE COURT: Is there anything that you misunderstood or would like me to repeat?

DEFENDANT ALESSI: No sir. I understood everything.

THE COURT: You made a lot of admissions to me.

DEFENDANT ALESSI: I know, sir.

THE COURT: It appears that has been the usual conversation between you and your client.

Is there anything that may cause you to . think that I should not accept the plea of guilty from your defendant?

MR. CALLINA: Absolutely not.

THE COURT: Doyou represent to this Court that I should accept this plea of guilty from your client?

MR. GALLINA: Yes sir.

THE COURT: Mr. Druker?

MR. DRUKER: I know of no reason not to

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accept the plea, your Henor.

THE COURT: On the basis of the colloquy between the Court and the defendant and upon the representations of counsel for both sides the Court believes there is a reasonable basis of fact to accept this plea and accepts the plea of guilty to the superceding information which is a one count information.

Bail.

Mr. Druker -- bail?

MR. DRUKER: I would ask that the same bail be continued.

MR. GALLINA: Your Honor --

THE COURT: He is on bail in 473.

MR. GALLINA: Correct.

I would ask that in view of the conversations I have had with Mr. Druker that the ordinary procedures be waived and the defendant be allowed to waive his probation report and be sentenced today.

THE COURT: You want that?

MR. DRUKER: Yes.

THE COURT: You had better sit down and talk to him a while.

(Recess taken)

(After Recess)

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THE COURT: What do you have, Mr. Druker?

MR. DRUKER: The Alessi sentencing at this time.

THE COURT: Mr. Gallina, you indicated earlier that the defendant wished to waive a pre-sentence report and wished to be sentenced immediately; is that correct?

MR. CALLINA: Correct.

THE COURT: Have you told Mr. Alessi what that means?

MR. GALLINA: Yes.

THE COURT: He understands that he is. /
permitted to have this matter adjourned until I
receive the report? .

MR. CALLINA: I explained it to him.

DEFENDANT ALESSI: I understand, yes sir.

THE COURT: You understand that and you are willing to waive the pre-sentence report and be sentenced now?

DEFENDANT ALESSI: Yes.

THE COURT: Okay, Mr. Alessi.

First of all, Mr. Gallina, would you make that in the form of a motion?

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MR. GALLINA: Yes.

I would move at this time that the probation report ordinarily issued in cases such as these be foregone andthat your Honor sentence the defendant today.

THE COURT: Any objection?

MR. DRUKER: No objection, your Honor.

THE COURT: Motion granted.

You are Virgil Alessi, the defendant named in this superceding information?

DEFENDANT ALESSI: I am, your Honor.

THE COURT: Mr. Gallina, standing to your

left, is your retained attorney?

DEFENDANT ALESSI: Yes, your Honor.

THE COURT: Do you want him to appear for you at this sentencing?

DEFENDANT ALESSI: Yes, your Honor.

THE COURT: Is there any reason why judgment should not now be pronounced against Virgil Alessi? MR. GALLINA: No, your Honor.

DEFENDANT ALESSI: No, your Honor.

THE COURT: Do you have any comments to make with respect to the terms or conditions of sentence? MR. GALLINA: I do not. I believe that your

Honor is sufficiently familiar with the indictment and I do believe --

THE COURT: Mr. Gallina, my opinion of this case amounts to what I heard in this morning's colloquies and colloquies from other defendants I cannot impune to your client.

MR. GALLINA: May I approach the bench?

THE COURT: No sir. On the record-unless you want to come up here indisay it side bar on the record.

If it is just that you don't want the rest of the courtroom to hear what you have to say, that's all right. As long as it is on the record I don't care.

(Side bar discussion)

MR. GALLINA: I understand there is a piece of information he wishes to disclose to the Court. I don't think it should even be in a sealed record, let alone this record.

MR. DRUKER: Your Honor --.

THE COURT: First of all, I'm going to ask with respect to this man's previous record -
MR. GALLINA: I don't believe he has one.

THE COURT: I'm going to ask.

MR. DRUKER: I think he had a ten day gambling sentence about 15 years ago.

THE COURT: Mr. Gallina, is there anything else you wish to say?

MR. GALLINA: No. your Honor.

(Conclusion of side bar discussion)

(Following held in open court)

THE COURT: Mr. Gallina, is there anything else you wish to say?

MR. GALLINA: No.

THE COURT: Mr. Alessi, you are the defendant, Virgil Alessi.

DEFENDANT ALESSI: Yes sir.

THE COURT: I am asking the same question I asked before -- is there any reason for judgment not to be pronounced upon you at this time?

DEFENDANT ALESSI: No.

THE COURT: Do you have anything to say other than what your lawyer said which you heard -- he just told the Court that I know about the case --

DEFENDANT ALESSI: Right, your Honor.

THE COURT: Is there anything you wish to say at this time?

DEFENDANT ALESSI: No.

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You. THE COURT: Mr. Druker, let me hear from

MR. DRUKER: Your Honor, I do -- in all candor and this isn't easy -- originally, this wasn't the world's strongest case. Basically, it was a conspiracy. The defendants were aware from the beginning what the case was about.

The most prominent government witness escaped --

THE COURT: Any chance of finding him?

MR. DRUKER: Just about nil.

THE COURT: Because if so I will adjourn this.

MR. DRUKER: He is out of custody since June. We came close to getting him and then lost him. We are unable to locate him through his attorney.

Now, as to Mr. Alessi, to me, the case is a weak one. We discussed it with the Eureau of Narcotics and Dangerous Drugs and that is the Government's opinion.

sentence whereby if he does deal again in narcotics we would have a hook on him -- if he does, we could get him then.

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He is willing to plead guilty and to give up the possibility, the good possibility that at a trial he --

THE COURT: Provided I accept the recommendation. If I don't accept your recommendation, then what? He'll be looking for an out on his plea.

MR. DRUKER: I can't speak for him.

THE COURT: It is apparent because apparently there were discussions in that regard. There is no sense denying it. It is as open and shut as could be.

MR. DRUKER: I won't deny it.

THE COURT: Don't you come here again on a case like this again. If you can win it, win it.

If you cannot win it you should lose it. If you cannot win it they are entitled to be not guilty but I am not taking any more such recommendations.

If they don't win it they have to take their chances on sentence and I don't mind telling you that I would give him 15 years without batting an eye.

MR. DRUKER: Do you want me to make a recommendation?

THE COURT: You are easing yourself into

that position.

You are going to take theblame.

MR. DRUKER: Your Honor, I've got to be realistic.

We think that a suspended sentence and probation for three years and I can assure your Honor --

THE COURT: If he comes back before me he would come back as a second offender. Does he know what that term would be?

MR. GALLINA: Each sentence is doubled. He understands that.

THE COURT: Go ahead, Mr. Druker.

You are asking that I give him an s/s.

MR. DRUKER: That's what I am asking for, your Honor. In this particular case, as lenient as it may seem, it satisfies the ends of justice, in my opinion.

THE COURT: Well, this will give more food for thought, so to speak with all the newspapers bandying articles about concerning the leniency of certain judges.

I am hoping they don't consider me one of them after this and I want you to take the blame

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for it. But in the future, beware.

On your plea of guilty to the indictment, rather, the superceding information -- we don't have a file number -- which was handed up today, I am going to, rather than suspend sentence, I am going to suspend the execution of sentence -- do you know what that means, Mr. Gallina?

MR. GALLINA: That's a substantial difference, your Honor.

THE COURT: And I will place him on probation for five years and if he gets in trouble -- bcware.

As I say, five years probation.

MR. GALLINA: Your Honor, in our discussions with the Government -- and I understand your Honor's predicament --

THE COURT: I'm not in any predicament. I'm as free as a bird.

MR. GALLINA: Well, your Honor, the Government has put your Honor in a position where your Honor has strong feelings about this kind of crime --

THE COURT: Not necessarily this kind of shenanigans.

MR. GALLINA: However, pursuant to all we discussed it was our understanding that the

Government would recommend a five year suspended sentence with probation for three years.

THE COURT: Keep it up. I am learning more.

That was your discussions with the Government,
Mr. Gallina? Is that correct, Mr. Druker?

MR. DRUKER: (nodding affirmatively)

MR. GALLINA: If your Honor would consider --

THE COURT: What is the difference between five or fifteen on an s/s? You will take the 15 on an s/s.

MR. GALLINA: Mo difference.

THE COURT: That's good enough for me.

You know, I'm not going to have a John's Bargain Store here. Either you understand me or you don't. If not, withdraw the plea and if you did, you'd do me a favor.

MR. GALLINA: If he violates the probation he comes back before you and he would be liable -THE COURT: For the whole 15.

Then again, he'd come back as a second offender and get 25.

MR. GALLINA: I believe that a five year suspended sentence and three years probation --

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THE COURT: Not today. I'm not in the mood. The answer is no.

The sentence here is adjourned.

MR. GALLINA: Your Honor --

THE COURT: I withdraw the sentence I imposed. I vacate the sentence and put this off for some other time. Suit yourselves.

MR. DRUKER: May we have a moment?

THE COURT: You can have all day.

Are there any others here?

MR. DRUKER: Your Honor, I think Alessi will be it for today.

THE COURT: I've got to cross all these names off.

MR. DRUKER: Your Honor, there may be dispositions and with regard to Mr. Uvino we are waiting for papers on a Rule 20 from Newark.

THE COURT: You handed up another one.

MR. DRUKER: I think we have 6.

This includes all the remaining defendants and I was going to ask if we might not keep that . open and we will close out the other case accordingly.

THE COURT: Yes, I want to do that.

Who else is going to plead?

MR. DRUMER: I think there will be dispositions with regard to Uvino, Paiollia. With regard to Williams, Leonard and Gardner -- with regard to Gardner, no disposition. With regard to Leonard, no disposition.

Therefore, the information handed up is against Alessi and Cesario.

(Recess taken)

(After Recess)

whether I asked him before pronouncing sentence -no, I want it expunged -- no, better leave it
and I will change it. I made certain statements
and I want them to stand. I will just have to
sound a little repetitious.

May the record indicate that I will vacate the sentence imposed — I think I already sentenced him two different ways — both are to be vacated after the discussions that we have had thus far and the recommendations made by Mr. Druker.

Therefore, Mr. Alessi, on your plea of guilty to the superceding information you are comitted to the custody of the Attorney General or his duly authorized representative who shall

designate the place of confinement for a term of five years plus three years special parole.

The execution of that sentence is suspended and I place you on probation for five years.

MR. GALLINA: Three years.

THE COURT: Five years, three years special parole. Same thing.

Now, which ones do you want to dismiss?

We have several cases.

First, 72 CR 88.

that.

THE COURT: Indictment dismissed.

MR. DRUKER: And we would move similarly with regard to 72 CR 473.

THE COURT: Dismissed as to this defendant.

MR. DRUKER: Also, 433, your Honor.

THE COURT: What number?

MR. DRUKER: 433, your Honor. That was an indictment that was superceded by 473.

THE COURT: 433 -- 72 Cr 433. Dismissed. as to this defendant.

MR. DRUKER: Thank you, your Monor.

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SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

AFFIDAVIT IN OPPOSITION

:

:

875 Cr. 772 (DBR)

VIRGIL ALESSI, et al ..

Defendants.

STATE OF NEW YORK)
COUNTY OF NEW YORK : SS.:

----x

JAMES O. DRUKER, being duly sworn, deposes and says that:

- Attorney in the office of David G. Trager, the United States Attorney in the Eastern District of New York, and, at the request of the United States Attorney for the Southern District of New York, I have prepared this affidavit in opposition to the motion of the defendant Virgil Alessi for dismissal of the above-noted indictment. I have reviewed the Affidavit of Jeffrey C. Hoffman dated November 10, 1975 in support of this motion (the "Hoffman Affidavit"), and my own files and records relating to the matters discussed herein.
- 2. During the period from July, 1970 to November, 1973, I was a trial attorney for the United States Department of Justice assigned to the Organized Crime Strike Force in the Eastern District of New York. From late December, 1971, through October, 1972, I was in charge of several prosecutions of Virgil Alessi, Anthony Passero, Vincent Papa and others.

- During this latter period, I was in charge of the investigations which resulted in three separate indictments of Alessi, Papa, Passero and their co-defendants. First on January 24, 1972, Indictment 72 Cr. 88 was filed naming Alessi and others as defendants. (Attached as Exhibit A Thereto.) This indictment was obtained almost entirely upon the basis of the grand jury testimony of Angelo Paradiso and shall be referred to as the "Paradiso Indictment". (Attached as Exhibit B to the Hoffman Affidavit are the minutes of the grand jury investigation of the Paradiso Indictment.) Secondly, on April 17, 1972, Indictment 72 Cr. 433 was filed against the defendant Virgil Alessi. (Attached as Exhibit B hereto.) This indictment was returned on the basis of the testimony of Stanton Garland and will be referred to as the "Garland Indictment." (Attached as Exhibit A to the Hoffman Affidavit) Finally, on May 1, 1972, Indictment 72 Cr. 473 was filed against Vincent Paps, Virgil Alessi and others. (Exhibit C hereto). This indictment was presented for the purpose of consolidating Indictments 72 Cr. 68 and 72 Cr. 473 into one charge and will be referred to as the "Consolidated Indictment." The grand jury testimony of Paradiso and Garland was resubmitted as the basis of this Consolidated Indictment.
- 4. The charges against Alessi and Papa in the Consolidated Indictment were that they and others were members of a conspiracy, the purpose of which was the

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distribution of heroin (Count One) in violation of Sections 173, 174 and 846 of Title 21, United States Code.

DUE PROCESS

- 5. In mid-March, 1972, counsel for Vincent Papa approached me and began plea bargaining. The negotiations were conducted on a continuous basis from mid-March until mid-August, 1972, during which period both the Garland and Consolida:ed Indictments were filed. Although the defendant Alessi, through his attorney Gino Gallina, participated, the negotiations were on behalf of the defendant Vincent Papa.
- 6. I promised Papa with respect to his plea, first, that his plea to Count One of the Consolidated Indictment, the conspiracy count, and Count Four of Information 72 Cr. 1058, relating to tax evasion for the year 1970 would satisfy these two cases and that the Government would recommend a sentence of no more than five years incarceration for these violations, which recommendation would almost certainly be followed by the Court. Secondly, Papa was informed that his pleas would satisfy all investigations of him known to me in the Eastern District of New York. However, counsel for Vincent Pape were put on actual notice that my representations bound only to the Eastern Dietrict of New York. I told Papa's counse! that he was covered on the marcotics comepiracy and that no overt acts from that conspiracy would be taken out and used to form substantive counts in subsequent indictments.

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- med another person were arrested in the Southern District of New York in possession of \$967,450. I was specifically asked by Papa's attorneys about this seizure and I told them that the investigation of the \$967,450 was in the Southern District's bailiwick and that I did not know what the Southern District was going to do with it. Counsel never asked me to inquire as to the status of the Southern District case, or of any other cases in other districts, nor did I do so. In September of 1972 Papa plead guilty and received the expected five years imprisonment.
- between myself and the lawyers for Vincent Papa and Virgil Alessi, that Alessi would plead to an information charging him with a conspiracy to violate the federal narcotics laws and for his plea to the information I would agree to recommend to the sentencing judge that the defendant Alessi receive a five year suspended sentence. It was further agreed that if the sentencing judge would not agree to such a sentence Alessi would not plead. The filing of the information was necessitated by the defendant Alessi's refusal to plead to the consolidated indictment since, for reasons not relevant here, he did not want to plead to the same indictment as Papa.
- 9. Thereafter on October 2, 1972 an information was filed in the Eastern District of New York charging the defendant Virgil Alessi along with Sally Ann Paiollia, Joseph Cesario and Henry Uwimo with conspiring to violate

the federal narcotics laws from on or about April 1, 1969 to December 18, 1971 in violation of Title 21, United States Code Sections 841(s)(1), 841(b)(1)s and 846.

(Attached hereto as Exhibit D). On that same day, October 2, 1972, the defendant Alessi pled guilty and was sentenced before the Honorable Anthony J. Travia, United States District Judge. (A copy of the Inutes of Alessi's plea and sentence are attached as Exhibit E). In accordance with the agreement Alessi received a five year suspended sentence and three years special parole. After his sentence the outstanding Eastern District indictments against Alessi were dismissed.

PROMISES TO ALESSI

- mainly on behalf of the defendant Vincent Papa who for his plea of guilty obtained from me an agreement to dismiss the charges egainst some of his co-defendants including Anthony Passero and others and the plea of guilty of his co-defendant Virgil Alessi who was to receive a suspended semtence.
- lawyers for the defendants Papa or Alessi did I tell them that I was intending to bind in any way the Southern District of New York. To the contrary I specifically excluded the Southern District from any negotiations since I told Mr. Papa's lawyers that the \$967,450 seized in the Southern District was a Southern District matter and I had nothing to do with it.

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- promise or infer in any way to the defendant Alessi or his counsel that he was receiving famulaty for his past crimes. Alessi was premised only that he would not be prosecuted for the same conspiracy.
- 13. At no time during the negotiations or afterwards, until I was so informed in 1975 by Assistant United States Attorney James Lavin was I aware of the existence of Anthony Manfredonia.

JANESS DRUKER

Sworn to before me this day of December, 1975.

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK 46 2 3 UNITED STATES OF AMERICA : 74 Cr. 1082 vs. 5 VINCENT PAPA, SR., et al., 6 7 Defendants. : 8 9 January 16, 1975, 11 A.M. 10 Before: 11 Hon. Charles L. Brieant, Jr., 12 District Judge. 13 Appearances: 14 PAUL J. CURRAN, ESQ., United States Attorney for the Southern District 15 of New York, John P. Cooney, Jr., Esq., 16 Daniel Beller, Esq., Assistant U.S. Attorneys. 17 IVAN FISHER, ESQ., 18 Attorney for defendant Papa, 'S. 19 NANCY ROSNER, ESQ., Attorney for defendant Stanzione. 20 FRANK A. LOPEZ, ESQ., 21 Attorney for defendant Papa, Jr. 22 THE COORE ROSENBERG, ESQ., Attorney for defendant Euphemia. 23 BEST COPY AVAILABLE 24 25

EXHIBIT D

I have now read, however we both come out to the same bottom line. You ought to all be apprised of that so that you can guide yourself accordingly in your proceedings.

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If you will check with me before we break I may

be able to bring you up to date on any other matters that may remain open which are important to you for your pretrial considerations.

All right, let's get started with the witness.

MR. FISHER: If your Honor please, with regard to the due process aspects of the double jeopardy due process motions --

THE COURT: That is your October motion.

MR. FISHER: Yes, your Honor.

are not entitled to a hearing on the double jeopardy branch of those motions pre-trial.

THE COURT: I am prepared to discuss that with you. I think you perhaps state my position a little more starkly than is realistic and I am prepared to take that up with you in an informal conference if it is helpful to you.

MR'. FISHER: Thank you, your Honor.

THE COURT: I want to take the use of this time, if p sible, to take the proof on your second half of your October 21st motion -- is that the date of it?

MR. FISHER: Yes, your Monor.

to come here and testify as to that.

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Internal Revenue Service.

Q Did there come a time, sir, when you came to represent the defendant Vincent Papa?

A Yes.

Q Was that in connection with a tax investigation being conducted against him in the Eastern District of New York?

A Yes, sir.

Q Did there come a time when you had a conversation with James O. Druker in regard to that investigation?

A Yes.

Q Who else was present?

A Theodore Rosenberg, another attorney that had been retained by Vincent Papa.

Q Do you recall approximately the date of this conversation?

A My diary indicates that it was August 18, 1972.

Q Where was this conversation had, Mr. Musoff?

A At Mr. Druker's office.

Please relate to us the substance, or if you can recall the words in that conversation, indicating who said what to whom.

A I believe I started the conversation by stating that I had been retained by Mr. Papa as tax counsel; that it

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was related	to me that Mr. Rosenberg had been engaged in
discussions	with Mr. Druker concerning the disposition of
all pending	cases that Mr. Druker was in charge of and that-

Q Excuse me, when you say pending cases do you mean cases pending or pending cases against Mr. Vincent Papa?

MR. BELLER: Your Honor --

THE COURT: Sustained.

- Q Did Mr. Druker indicate a defendant with regard to pending cases?
 - A Vincent Papa.
 - Q Continue, please.
 - A Mr. Rosenberg had said that --

MR. BELLER: Your Honor, as to what the witness knew from Mr. Rosenberg the government would object to hearsay testimony.

THE COURT: You are not giving us a conversation you had in the presence of Mr. Druker, is that right?

THE WITNESS: Yes. This is the conversation.

This is what I am saying to Mr. Druker. I was explaining the background as to why I had requested the meeting with Mr. Druker at that time.

THE COURT: Why don't you let the witness start at the beginning of his discussions with Mr. Druker and give us the substance of what he said to Mr. Druker, what

Mr. Rosenberg said in his presence and Mr. Druker's presence and what Mr. Druker said.

MR. FISHER: Yes, your Honor.

THE COURT: Why don't you start at the beginning again.

A I explained to Mr. Druker that I had been retained as tax counsel by Mr. Papa; that I had requested the meeting with Mr. Druker because Mr. Rosenberg hadn't related that in his prior discussions with Mr. Druker that Mr. Druker wanted to recommend -- somebody in the Internal Revenue Service insisted that Mr. Druker recommend a five-year sentence upon a disposition of all pending cases against Mr. Papa by means of his plea. I stated that I never heard of this procedure; that it seemed to be unusual for somebody in the Internal Revenue Service to dictate to the U.S. Attorney's office the type of sentence that should be recommended and that I wanted the opportunity to converse with that Internal Revenue Service employee.

Mr. Druker stated that the information was incorrectly relayed to me; that it was Mr. Druker's feeling that a five-year sentence should be recommended and nobody in the Internal Revenue Service had recommended this to him.

I said so that there would be no other misunderstandi Mr. Rosenberg had also relayed the fact that if Mr. Papa

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were to plead to the -- to an income tax violation and the contemplated narcotics violation, would that resolve all pending cases against him, because if it didn't then he wouldn't be in a position to adequately defend himself

against future charges once he was incarcerated.

Mr. Druker stated that he knew of no other pending cases except those in the Eastern District and that if Mr. Papa were to plead that it would dispose of all pending cases against him.

Then he gave an illustration. As I recall it Mr. Druker stated that if anybody who was connected with any of the pending cases against Mr. Papa were to come forward with additional information which could form the basis for an additional charge against him he would not pursue that information to prosecute Mr. Papa, but if that somebody who was then unknown to him were to come to him, say somebody who said that Mr. Papa was involved with the hijacking of wrist watches or something of that nature, then he would feel free to prosecute him.

THE COURT: He mentioned wrist watches?

THE WITNESS: I believe he did, your Honor.

THE COURT: You may continue.

Was anything else said with regard to bargaining orr had burd sous, or the same than as his or the disposition of the cases pending against Mr. Papa

day?

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Musoff-direct cross

in the Eastern District at that meeting, sir?

MR. BELLER: Your Honor, I believe the witness has already answered.

> THE COURT: I am not certain he did, Mr. Beller. Have you give us the entire conversation on that

THE WITNESS: In substance, yes.

MR. FISHER: I have no further questions.

THE COURT: You may cross-examine.

CROSS-EXAMINATION **

BY MR. BELLER:

When were you retained, Mr. Musoff, by Mr. Papa in connection with this tax proceeding?

I was retained in approximately July of 1972.

What were the circumstances that led up to your being retained?

The circumstances were that there were a pending income tax investigation being conducted by the Intelligence Division in Brooklyn in coordination with the U.S. Attorney's office, that Mr. Fahringer had been retained I believe to handle that aspect and that I was to render technical assistance to him in connection with that investigation.

THE COURT: Was this an audit of returns that we are talking about or was this arising out of the million or the desposation to the co

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THE WITNESS: To my knowledge it was not arising out of the million dollars. It was an independent -
I don't know what the genesis of the case was, your Honor.

It was an investigation by the criminal branch of the Internal Revenue Service, which is the Intelligence Division.

THE COURT: With respect to a particular return,

THE WITNESS: With respect to a number of years.

Q Are you aware how Mr. Papa or Mr. Fahringer became aware of the investigation?

MR. FISHER: Objection, if your Honor please.

Irrelevant.

THE COURT: It may or may not be relevant. I will take it subject to connection.

MR. FISHER: Also calling for --

THE COURT: He can answer it yes or if he is aware.

- A I am unaware.
- Q Pardon ma?
- A I am not aware.
- Q Your specialty is tax metters, is that correct?
- A That's correct.
 - Q Now, you went to discuss the information you had

1	rgh	Musoff-cross 11		
2	received	from Mr. Rosenberg with Mr. Druker on August 18th,		
3	is that c	orrect?		
4	А	That's correct.		
5	Q	That was because you were particularly interested		
6	in this i	nformation with respect to an IRS agent who had		
7	made reco	mmendations of sentence, is that correct?		
8	Α .	That's correct.		
9	Q	And it was the IRS practice that seemed to be		
10	unusual t	o you at that time, is that correct?		
11	Α .	That's correct.		
12	Q	All this was with respect to the tax case, is		
13	that correct?			
14	А	Pardon me?		
15	Q	All of your concern was with the tax case, is		
16	that corre	ect?		
17	A	Primarily, yes.		
18	Q	Did you have expertise in any other matters?		
19	A	No, I did not.		
20	Q	Were you involved in any other investigations		
21	involving	Mr. Papa?		
22	A	No, I was not.		
23	· Q	So your concern was with the tax case exclusively,		

That is correct.

was it not?

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	rgh A 57 Wusoff-cross 12
2	Q Had you been a party to any plea negotiations
3	prior to your meeting with Mr. Druker on August 18th?
4	A I was not.
5	Q But you were aware, were you not, that there
6	had been plea negotiations prior to your meeting with Mr.
7	Druker?
8	A Yes, sir.
9	Q In fact you were aware that there had been plea
10	negotiations on behalf of Mr. Papa with Mr. Druker prior
11	to your even being retained in the case, were you not?
12	A No, I am not aware of that.

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You were concerned with possible misunderstandings between Mr. Druker and Mr. Rosenberg, is that correct?

That is correct.

Your concern at that meeting with Mr. Druker was with the tax investigation with which you were exclusively concerned, was it not?

Initially it was, but then I shifted over because I felt it was important for Mr. Papa, if he were to entertain rendering a plea of guilty that he be aware of all the facts and that they be accurately represented to him. In other words, if there was a misunderstanding with respect to the tax case I wanted to make sure that there wouldn't be a similar misunderstanding with respect to the other information

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2	Mr. Rosenberg had imparted to me.	
3	Q Mr. Rosenberg was present at the mee	ting with
4	Mr. Druker, was he not?	
5	A That is correct.	
6	Q Did Mr. Papahave any other attorneys	?
7	A Present at that meeting?	
8	Q With respect to any other investigat:	ions that
9	you knew of.	
10	Yes, he did.	
11	Q Who was that?	1. *15
12	A Mr. Fahringer.	
13	Q Mr. Fahringer and you with respect to	the tax
14	case, is that right?	
15	A Right.	
16	Q You say you were concerned that if Mr	. Papa were
17	sentenced to five years he would not be able to	
18	for future cases, is that correct?	
19	A That's correct.	: :+:
20	Q Did you know of future cases?	
21	A At that time	
22	MR. FISHER: Objection, your Honor, ca	lling possibly
23	for information clearly within the attorney-clic	
24	not waived by the testimony of this witness or	
25	examination.	inferrence.

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THE COURT: I think the question could be reframed to obviate the possible exception. I think there is a legitimate area of inquiry here, but I don't think the question is whether he knew of future cases. I think he can be asked as to whether anyone had said anything to him which gave him reasonable ground to believe that there might be future cases.

You knew at the time of the tax investigation, is that correct?

- A That's correct.
- And the narcotics investigation, is that correct?
- That's correct.

THE COURT: You see, I still don't know what the tax investigation was, what years it covered, what years he finally pleaded to.

Mr. Musoff, what--

THE WITNESS: Your Honor, I did not handle the actual plea. After I related this information I stepped out of the picture and I didn't play a part --

THE COURT: We have the information that he pleaded to downstairs.

- THE WITNESS: In the decision making process.

THE COURT: You don't know what years they were

examining?

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examining?

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THE WITNESS: Yes. They were examining years I believe from 1967 through 1971.

MR. BELLER: The government has no further questions.

THE COURT: Any redirect examination?

MR. FISHER: No, your Honor.

MR. FISHER: No, your Honor.

THE COURT: All right, Mr. Musoff, you are excused.

(Witness excused.)

MR. FISHER: We have nothing further at this time, your Honor. We are awaiting the arrival of Mr. Druker at about 2 o'clock.

THE COURT: Is Mr. Rosenberg going to testify?

THE COURT: All right, then at this time I understand that Mrs. Rosner has handed up a medical excuse for Mr. Stanzione.

MS. ROSNER: I have, your Honor. The note reflects that as recently as yesterday he was examined by his physician, I believe it is Dr. Londin, and is still running a 102 fever.

I would suggest, your Honor, as the government did when we attempted originally to schedule these motions, that we hold the motions to suppress immediately before the respective witnesses testify. My experience is, your

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Honor, that it never takes more than ten minutes at the outside and I don't see any objection. The government originally suggested the procedure and I think it is a situation where Stanzione should be present for this type of hearing.

THE COURT: The request poses somewhat of a problem here for me in this regard, that this is a case where I will be dealing with a sequestered jury and I don't think it is in the interests of anyone, the jurors, the court the government or any defendant for jurors to have lengthy periods of time staring at the walls of the jury room while the court conducts what is supposed to be a brief hearing, but occasionally may extend and I don't cut anybody off if they have relevant proof to offer. I can't take a guarantee that the hearing will only take ten minutes.

MS. ROSNER: May I suggest this, then, your Honor.

One thought that occurs to me is that if he is not better tomorrow I might take the proof and not close the hearing. You and Mr. Stanzione can read the transcript and if when he returns, if I can take him at the end of the day or at a luncheon recess or something I might reopen the hearing and complete any matters which his reading of the transcript will call to mind. That would be one possibility.

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MS. ROSNER: I have an alternative, your Honor, which may work just as well. I know your Honor contemplates long days because of our sequestered jury, but I would be perfectly happy, since the motion is made by us, to remain after the finish of the court day preceding the testimony of either of these witnesses or the first court day of trial or any afternoon convenient to your Honor and we could have the hearing then and not interrupt the jury's day or have them inconvenienced.

THE COURT: You know I have to think about the supporting personnel. There is a limit to the number of hours which our dedicated staff people, the court reporters, the clerks, the marshals, all the other people can work. A couple of our defendants are in the House of Detention and they have to get there in time to have their dinner.

while I would like to get the case going as expeditiously as possible, and I have tried to be very emphatic with everyone, including the prosecutors, about my wishes in this regard, I think you come to a limit, you come to a practical limit of how much you can do on that.

It looks to me if what he has is the flu -- the doctor doesn't say what his condition is except that he has a cough and a general malaise and a fever of 102 degrees, which is not insignificant by any means, but it is not

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likely to be long standing and I wonder why you couldn't come in tomorrow and do it.

MS. ROSNER: That is fine, Judge.

THE COURT: Why don't you run a check on his health tomorrow and we will see. I will see what time we can arrange it.

MR. COONEY: Yes, we could have our witnesses here.

on Mrs. Rosner now and on the court -- I have already given it to Mr. Lopez -- an affidavit in opposition to this motion.

THE COURT: I thought it was agreed that the court should take proof on this motion.

MR. COONEY: Well, your Honor, the government's position is that there hasn't been an adequate factual showing that there are bases for any allegation that there is improperly suggested out of court photographic identification. We suggest in our affidavit that an expeditious way to handle this motion would be for the government to turn over to the court and to the defense counsel, make available to defense counsel the spread of photographs that were shown to the various witnesses and if after these witnesses have testified at trial and established the basis for the contention of their prior contacts with these defendants,

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of court statement we could go further with the hearing, but we think pre-trial that the delivery to the court of the pictures should be sufficient.

THE COURT: I don't want to take anything ex parte.

In fact as far as I am concerned you mark the exhibits,

mark the pictures and give them to counsel. If counsel

thinks the pictures are sufficiently representative so as

not to be a ground for a grievance, I assume counsel will

proceed accordingly.

MR. COONEY: I have no problem with that, your Honor. Perhaps we could do that.

THE COURT: I think you should do that and then Mrs. Rosner may respond.

MR. COONEY: Fine.

THE COURT: Would you take a look at his pictures.

That should have been done earler.

MS. ROSNER: Maybe if counsel can confer a little while we may beable to reach a disposition on it.

MR. COONEY: We may be able to resolve it.

MS. ROSNER: I don't offer that as a binding offer to stipulate, but we will explore it at least.

THE COURT: All right, I would like to take a short recess and I wonder if Mr. Cooney and Mr. Beller and

(In the robing room.)

which you made outside as to what disposition I had made of these motions and I felt that since you had presented at least a part of your application by documents which on your application were sealed and by an in camera hearing, that perhaps you would prefer to have your inquiry stated in the same fashion so we don't create any problems.

MR. FISHER:: Thank you.

THE COURT: I am in the process of writing a short memorandum on this subject. It has taken me longer than I expected. I want to hear what Mr. Druker says about the plea bargaining and I didn't really realize I was getting more testimony from Mr. Druker until yesterday.

I have a slight logistics problem. I think you are entitled to have the findings made on your motion to suppress before you go to trial. I would love to wait for the Court of Appeals in Tramunti, but I think it would be unfair. So I have on the production line a memorandum I have to write in Mr. Laifer's matter and the question of this Rule 12 motion that you have, or the two Rule 12 motions which I expect to deal with together.

Now, the bottom line of it is that I am planning to determine those motions at the end of the trial. I am

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stating the reasons for reaching that conclusion. Unless something unforeseen or something not set forth in your motion papers is introduced into it this afternoon I will exercise the discretion granted to the court under Rule 12 subparagraph 4 of the Criminal Rules. If this creates a problem for you to the extent that you have some plan which requires you to have a formalistic decision from this court, then you could disclose it to me and I will put everything else aside and do this first. I assume you would rather have me tend to the money first, but when you asked me the question which you asked outside in the flat out fashion in which it was posed I assumed that maybe you were anxious to resolve of record where the court was going, and if that is your problem please tell me and both sides of this case will have no full cooperation to get it out for you faster.

MR. FISHER: That is the case, quite frankly, your Honor. To be candid with you, after your Honor indicated that you were considering not deciding the motions pre-trial, I think I did say that it was our position that the court had no discretion in that area. Your Honor has vast discretion in how you proceed, but our position is the court is required to decide the question one way or another pre-trial.

THE COURT: May we are quibbling over the use of

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the word "decide". Obviously the court has to deal with the motion, but I take the view that the court need not grant or deny relief with finality with respect thereto, but they hold these special issues for the disposition of the general issues. I am about 90 per cent completed in my research on this matter and while I was reacting in an impromptu and perhaps improvised fashion in my talks with you yesterday where I indicated what I thought I would do, I now find that there are reported cases which substantiate doing that and I expect to lay out the problem and reach the conclusions, cite the cases and give my reason. I am a little bit concerned about making a memorandum order, which I suppose would have to be sealed also, in view of the continuous requests to seal the Druker material, which I have honored in each case and which the government has not opposed. If you need that in a hurry I will get that for you as promptly as I can. All you have to do is to tell me. That is why I invited you in here.

MR. FISHER: I appreciate that. Might I just state this, your Honor. There is dictum mallah which does suggest in a double jeopardy motion the court may be well within its discretion and we insist the other way, but speaking candidly there is that dictum which suggests the court might well hold off.

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THE COURT: I would ask you to try to not reargue the merits. I am trying to meet whatever tactical or practical problems face you in this matter.

MR. FISHER: I appreciate that.

THE COURT: If they don't exist, as I assume perhaps they do from what you said outside, then tell me they don't exist and I will take a longer lunch hour.

MR. FISHER: They do exist, your Honor. We are not interested in an opinion on the million dollars at this point in time. We are much more interested in your ruling on the due process double jeopardy motions because—

THE COURT: Loes that have to be sealed?

MR. FISHER: Quite frankly, your Honor, I would hope that the court would deal with each motion separately, and I will tell you frankly why. We were planning to go to the Court of Appeals in the event that your Honor does not decide the issue pre-trial.

THE COURT: I inferred from what you said outside that that might be the case. Of course that's what the elevators in the building are for. You are certainly free to do that. Just tell me so I can file it accordingly. That is really what I was trying to find out. That is the purpose of asking you, that plus finding out whether you wanted it sealed. I expect to deal with them in a

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combined, but of course, since Stans v. Gagliardi, the
Court of Appeals has showed a willingness to deal with
these matters and, you know, if they want to they can. So
I hope they realize that just like Stans v. Gagliardi we
have this jury panel all set to come in here, all these
taxpayers that we are going to have to lock up for three
weeks.

anything further with you at this time. I will make every effort to have my memorandum and order ready for you by the end of the day, with any luck. If there are proof-reading mistakes in it don't any of you take umbrage.

MR. FISHER: I am hardly in a position to do that, your Honor. Might I just say, so that I know -- we could be doing our research this afternoon -- your Honor is not deciding the merits of the issue, but merely indicating that you will not decide them at this point; is that roughly it?

THE COURT: I am basically relying on Rule 12, subdivision 4 and I am also relying on decided cases in this circuit and elsewhere. More of them, by the way, exist than I had thought. I had thought this was a question which people ordinarily didn't litigate, but I was surprised

all of your rights under both motions. At least that is
what I propose to do, unless they tell me I can't, and giving
my reasons for the exercise of the discretion in that regard
and I will try to get it in your hands as promptly as
possible.

Now, how long are you going to be this afternoon?

MR. FISHER: I don't think we will be longer than
an hour at most with Mr. Druker.

THE COURT: All right, then I suppose I should see you again at 2:15. Try to be a little early.

(Luncheon recess)

AFTERNOON SESSION

2:30 P.M.

Present:

Mr. Beller

Mr. Fisher

Mr. Rosenberg

Mr. Vincent Papa

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THE COURT: How about Mr. Laifer?

MR. ROGENBERG: He is not here, your Honor.

THE COURT: Are you prepared to proceed?

MR.FISHER: Yes, your Honor, I am.

THE COURT: Let's get the witness in.

MR. FISHER: James O. Druker.

Your Honor, in the interest of expediting matters I wonder if wouldn't be permissible to make the affidavit of Mr. Druker a part of the record.

THE COURT: It is a part of the record, but you can't determine contested facts on affidavits.

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JAMES O. DRUKER, called as a witness, having been duly sworn, testified as follows:

21 MR. FISHER: So that the record is clear, your 25

Honor, this testimony will be limited to the due process

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aspects of the previous motion filed in October and will not go into the double jeopardy contentions.

THE COURT: All right.

DIRECT EXAMINATION

BY MR. FISHER:

- Q Mr. Druker, how are you presently employed?
- A I am an Assistant United States Attorney for the Eastern District of New York.
 - Q How were you employed in 1972, sir?
- A I was a special attorney with the organized crime and racketeering section of the United States Department of Justice.
 - Q Was that your first position with the government?
 - A With the federal government, yes.
 - Q When did you become so employed?
 - A In July of 1970.
 - Q When were you admitted to practice?
 - A November, 1969, in Massachusetts.
- Q Are you familiar with a prosecution brought against the defendant Vincent Papa by the Strike Force in the Eastern District of New York?
 - A Yes.
- Q What was your relationship, if any, to the prosecution?

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	Α	I	conducted the	investigation	and	prosecution
of	Mr.	Papa	and others.			

- Q Were indictments filed in connection with that prosecution?
 - A There were.
 - Q Which were they?

A That I can recall specifically there were three.

One I believe was 72 Cr. 88, which would have been filed around January of 1972. Then there was 72 Cr. 433, which would have been March or April -- probably April of 1972. Then there was 72 Cr. 478, which was May or June of 1972.

- Q Would that be 72478 or 72473?
- A 473 probably.

THE COURT: It is the one attached to the motion papers, isn't it?

MR. FISHER: Yes.

THE COURT: There is no argument about the genuineness of the indictment.

Q Now, you prepared an affidavit in connection with the proceedings herein?

A I did.

Q That was sworn to by you on November 11, 1974?

A 75 Druker-direct

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Q	Therein	you	recite.	do	you	now,	these	three
affidavit	s?	*						

- A The three indictments do you mean?
- Q I'm sorry, indictments, yes.
- A Yes.
- Q And you recite the dates that they were filed?
- A Yes.
- Q And the dates cited therein are correct, is that correct?
 - A To the best of my knowledge, they are.
- Q With regard to 72 Cr. 88, that was an indictment based on the grand jury testimony of Paradiso?
 - A · Of one Angelo Joseph Paradio.
- Q And with regard to 72 Cr. 433, that was based on the testimony of Stanton Garland, is that correct?
 - A principally, yes.

THE COURT: On the first indictment, was there other testimony besides Paradiso?

THE WITNESS: I would believe it would be principally Paradiso, but not exclusively and with regard to the second indictment principally Stanton Garland.

- Q What other evidence was presented to the grand jury with regard to the Paradiso indictment?
 - A With regard to that indictment I believe there was

the testimony of Suffolk or Nassau County police officers.

I believe I recall a James Thompson and possibly one or
two other officers that testified.

THE COURT: Just surveillance testimony of Paradio?

THE WITNESS: Some surveillance and I believe

search warrants. They testified with regard to the fruits

of some search warrants that were executed in that case.

THE COURT: Against this defendant?

THE WITNESS: Against co-defendants.

Q With regard to 72 Cr. 433, the Garland indictment, what other testimony, if any, was presented to the grand jury generally?

A I can't recall offhand. There may have been a Bureau of Narcotics and Dangerous Drugs agent. All that I can actually recall is Garland.

Q Now, you testified about indictment 72 Cr. 473 which was referred to in your affidavit as a consolidated indictment.

A That's correct.

Q Consolidating the two previous indictments, is that correct?

A Yes.

Q Was testimony present to the grand jury beyond that which you have already discussed in connection with the

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first two indictments?

To the best of my recollection, no. My best recollection is that it was the same grand jury that heard the prior two indictments and that they were asked to supersede those two indictments.

- During your prosecution of these cases against Vincent Papa you met from time to time, did you not, with his attorneys?
 - A Yes.
 - Who? Q
- Variously it was Theodore Rosenberg, Esq., Frank Lopez, Esq., Wally Musoff, Esq., and Gino Gallana.
- Do you recall the point in the pre-trial happenings in connection with those cases that a witness for the government disappeared?
 - Yes.
 - Was that on or about June 30, 1972?
 - Yes.
- Do you recall thereafter discussions with counsel Q for Papa with regard to a plea bargain?
 - Yes. Both prior thereto and afterwards.
- Did you have a conversation on or about August 18, 1972, with Messrs.Rosenberg and Musoff? 27.72
 - "U. na": Lifett, Lifett I can't recall the date. I had numerous

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Mr. Musoff alone, Mr. Gallina and Mr. Rosenberg, Mr. Lopez and Mr. Gallina. Some telephone and some in person. I couldn't give you the dates of any.

versation where only those present were you, Mr. Rosenberg and Mr. Musoff?

A I have no specific recollection. I am not saying there wasn't, there probably was. I don't specifically recall any.

Q You recall, however, a conversation in relation to plea bargaining with regard to Mr. Papa had with Mr. Musoff?

A -- I recall --

THE COURT: You are talking of Mr. Papa had by yourself and Mr. Musoff.

THE WITNESS: Mr. Musoff came in fairly late in the game, as I recall, and his role--

THE COURT: Can't you just answer counsel's question. Do you recall any such three-way conversation?

THE WITNESS: I can't specifically. I recall discussions with Mr. Musoff, but I can't recall who elese was present during those discussions.

Now, during the course of the various negotiations

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that you have described, these negotiations led ultimately to a plea bargain, did they not?

- Yes.
- When in point of time was a bargain reached?
- I believe the bargain was finalized on August 18, 1972. It may have been shortly prior thereto, but that would be my best recollection.
 - How, sir, do you fix that date? Q
- The first step in the bargain that we had consummated was to be the surrender of three or four of Mr. Papa's co-defendants which took place I noticed on my file this week on August 21st of 1972. Something that I reviewed in my files indicated to me that I had met with them on August 18th. I can't recall what it was, but that would be the preceding Friday, which I believe is when the agreement was finalized. May have been shortly prior to that.

THE COURT: These were fugitives who were surrendering or people on bail or what was it?

THE WITNESS: These were fugitives. Part of the agreements was that these individuals would surrender themselves on August 21, 1972.

This bargain that was arrived at on or about August 18, 1972, was arrived at in a conversation between you and counsel for Papa, is that correct?

Druker-direct

A Yes.

Q Who specifically were present?

A Again at that time Mr. Musoff I remember had the lead, more or less, in the discussions. I am certain that he was present. I can't recall which, if any, or how many of co-counsel were present.

Q Please relate to us as best you can the conversation as it related to the final bargain struck.

A All right, let me say my best recollection is that Mr. Rosenberg was present also, although I can't say for sure.

The final discussion was that -- and I don't recall which specific defendants. It was I believe somewhat of a package deal. Mr. Daniel Ranieri, Mr. Rocco Evangelista and I believe Mr. Anthony Passero, who at that time were fugitives, were to surrender to the government on August 21, 1972. They were to be processed and printed. Subsequently, as part of the package the government was to dismiss the cases against them. Mr. Papa and I believe some other people, but I am not certain, but I know Mr. Papa was to plead guilty on September 5, 1972, to a one count conspiracy plea on the indictment. I believe it was a 173 or a 174 Title 21. The government was to recommend a five-year sentence for Mr. Papa and it was fairly well understood that the judge

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would listen strongly to the government's recommendation in the case. Mr. Papa would surrender on October 2, 1972, and as soon as I had received word of his surrender the

government would dismiss against Mr. Passero, Mr. Ranieri and Mr. Evangelista.

THE COURT: Who was the fourth fellow?

THE WITNESS: Di Ametto, possibly. Possibly

Frank Di Ametto.

Q Was a man named Virgil Alessi part of this bargain?

A Yes. With regard to Mr. Alessi, I believe the government was to dismiss against him, I am not a hundred per cent certain, and I believe Mr. Passero was to take a guilty plea rather than be dismissed. I can't remember all of the details in that regard.

Q Was anything else promised to counsel for Papa in return for his plea?

A Are we referring now to what the plea would cover him on?

Q Yes.

A Mr. Papa was advised -- he was concerned he said about -- through his attorney --

THE COURT: Was he there?

THE WITNESS: No. This would have been through Mr.

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Musoff and possibly Mr. Rosent ig and possibly one or more co-counsel. Mr. Papa, through his lawyers, advised that he was concerned about being indicted again on the same conspiracy. He wanted to know that once he took his plea and was sentenced, that that would be the end of his case. I advised Mr. Papa's lawyers that he was covered as far as this conspiracy went. I told him that the state of the law afforded him this; that if it should subsequently turn up next month or next year that a witness came to us with evidence against Mr. Papa on another piece of this same conspiracy, that he was covered on that. I further made clear to them that should a witness pop up who gave us evidence of unrelated criminal activities on Mr. Papa's part, even though it was during the same period of the conspiracy, that he was not covered on that.

Q Now, you used the word "covered" here. Is that the word you used then, if you can recall?

A No. What I would have said then is that he is covered on this conspiracy and he won't be indicted for reindicted or rearrested for any piece of this conspiracy. I think I went into a little more elaboration. I advised, for example, that if somewhere down the chain of the ladder it turned out that Mr. Loria had been selling heroin to five or six people who were not named in my conspiracy but

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that it developed or became clear that this was as a result of the same chain from Mr. Papa on up, that he would be covered on this. Anything to do with that conspiracy.

Q That conspiracy or crimes going out of that conspiracy were covered?

A That conspiracy or any of the overt acts contained in that conspiracy.

Q At that point in time Mr. Papa stood indicted, did he not, under an 848 count, which was the fifth count in 72 Cr. 473?

A That's correct.

Was counsel for Papa toldat that time by you that his plea as contemplated to the conspiracy count would satisfy count 5, the life count?

A Well, I believe he was told that his plea -- I think the understanding was -- was in satisfaction of the indictment.

Q And every count naming him contained therein, is that right?

Yes.

THE COURT: You used the word "unrelated" in one of your recent answers. Is that the word you used in your discussions with these people?

THE WITNESS: To my best recollection, yes, sir.

THE COURT: Did you qualify or modify or explain that word "unrelated" in any way?

THE WITNESS: I gave them a hypothetical which, if I recall, was that if a witness popped up and it were a witness that was part of this same conspiracy and he told us about Mr. Papa being involved in hijacking activities during that same period of time, even though there may be some of the same cast of characters involved, that he would not be covered on that.

THE COURT: Did you have a suspicion at that time that he had been involved in hijacking activities?

I said I didn't want to give him a carte blanche for everything that he may have done in the past. I said he is covered
on this conspiracy and that's it. I do remember using the
term "carte blanche" and telling them that he was not going
to be covered on everything that he had done during that
period of time or prior.

Q Do you recall posing a hypothetical involving stolen watches in a hijacking?

A Yes.

THE COURT: What was the basis for using a reference to hijacking? Did you connect Mr. Papa in some manner with hijacking?

THE WITNESS: No. I just tried to pick somethingit was just the first non-narcotic crime that entered my
mind. It could have been bank robbery or something else.

Hijacking just happened to hit me at the moment.

Q So with regard to or in consideration for Mr.

Q So with regard to or in consideration for Mr.

Papa's plea to count 1 of the consolidated indictment,

Mr. Druker, he was promised then that he would not be

prosecuted for further aspects of that conspiracy, would that

be a fair statement?

A Yes.

Q Even if they were to form substantive counts?

MR. BELLER: Your Honor, I object.

THE COURT: I will overrule the objection, although
I think that the objective test has to be applied to what
Mr. Druker told the attorneys. I will take the answer.

A I told them what I just testified to and I also told them that -- I said "I am giving him what the law affords him." I said he can't be indicted again on the same conspiracy. Beyond that and the one or two hypotheticals that I mentioned I didn't elaborate any further, nor did they.

Q Was there any discussion about the possibility of a substantive count involving transactions relating to the conspiracy to which he had pleaded?

A There may have been. I have no specific

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recollection of any.

THE COURT: What is your basis for saying there may have been?

THE WITNESS: Simply that I can't say a hundred per cent that there wasn't. I don't recall it at all. I have absolutely no recollection of it. I know that something was mentioned about overt acts from our conspiracy that he was covered as far as those were concerned.

- Q As far as substantive counts?
- A Well, the terms we used were overt acts.

MR. BELLER: Your Honor, I object to Mr. Fisher's characterization.

. MR. FISHER: I'm sorry.

THE COURT: I think within reason Mr. Fisher may explore the witness' subjective thinking, but what is really more important is what did he say.

THE WITNESS: The term that we referred to was overt acts.

- Q What I am trying to get at, was anything --
- A I remember I said we are not going to pluck out an overt act out of this conspiracy and then turn around and reindict him on it.
- Q So that Mr. Papa was promised as well, then, in return for his plea, overtexts in furtherance of this

conspiracy would not give rise to subsequent individual prosecutions?

A That's correct.

Q Was there any discussion with regard to related investigations of Mr. Papa?

A Yes.

(Mrs. Rosner and Mr. Lopez entered courtroom at this point in time.)

O What were they?

lection is June, I was advised that the Internal Revenue
Service had a tax case going, or a tax investigation
which they were proceeding with against Mr. Papa. I remember
a special agent came up and asked me if I was handling
the Papa narcotics case and then he advised me of his investigation. Following this I disclosed the investigation
to counsel for Mr. Papa and this in itself became a subject
of the plea bargaining.

Q What was agreed upon between counsel for the government and the defendant with regard to that investigation?

A This was part of what we referred to previously as the package. Mr. Papa would be pleading to one count of an income tax information charging him with evasion and that he would be sentenced to five years on that, or

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that the government would recommend a five years' sentence, which was to be concurrent with the narcotics sentence.

Q And that plea, or the plea package would then satisfy whatever Internal Revenue investigation was then pending against Mr. Papa?

A That's correct. It was in satisfaction of the indictment which encompassed -- of the information, which encompassed all aspects of the IRS investigation.

THE COURT: Did you have a practice at that time to reduce such a bargain to writing?

THE WITNESS: No. It would generally -- subsequently we developed a practice of putting such agreements into a memo form or a letter to counsel with a copy to the court.

At that time we did not.

THE COURT: Either in your own files or in your dealings with opposing counsel?

THE WITNESS: No. Earlier in this particular case I had done a memorandum to Washington to the Organized Crime Section asking for approval on a plea package which subsequently fell through because of the escape of one of my witnesses. That was the only — the only part of the plea bargaining that was reduced to writing in this case.

THE COURT: A more rigorous bargain that was

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THE WITESS: Yes.

THE COURT: Was any part of this bargain disclosed to the court?

THE WITNESS: Of the previous bargain?

THE COURT: No. This present one, the one you are testifying to.

THE WITNESS: Yes.

THE COURT: In what manner or by what means?

THE WITNESS: It was disclosed to the court by my going into chambers with the trial judge, stating to him what counsel had offered to us, stating the weaknesses of our case, the problems that we faced and asking if the court would go along with the government's recommendations in the case to which the court indicated that -- I think the judge's words were "I don't give out any guarantees, but you can tell counsel that I will listen very, very strongly to the government's recommendations in cases like this and they can pretty much be assured that the government's recommendation will be followed."

THE COURT: This occurred prior to the meeting that you are just testifying to?

THE WITNESS: This occurred after August 18th, I believe, and on the morning -- I would say that this occurred on September 5th, the morning of the actual pleas,

that I stopped into the judge's chambers out in Westbury and that if his answer was negative the whole thing would fall through.

Q Prior to your testimony here today, Mr. Druker, you have had conversation with me, have you not?

A Yes.

Q And therein have I ever asked you to check your files for the possible existence of any inter-office memoranda or any inter-departmental memoranda with regard to the plea bargain package we have been discussing?

A Yes.

Q And you found none, other than the one you described to the court.

A That's correct, yes.

Q With regard to the one that you described to the court have you had occasion within the last few weeks to look at that?

A I would say a month or so ago I reread it.

Q And does that document in any way -- would it in any way assist you in your recollection of the events we are now discussing?

A No. That document simply had terms --

THE COURT: He just asked you whether it would assist you in refreshing your recollection. That's all. Your

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answer is yes or no.

A The answer is no.

Q In addition to the promises and conditions
that you thus far described was anything said between counsel
here regarding related investigations of Vincent Papa?

A I am not sure if I understand. In other words, did I tell him that we had other investigations or that we didn't have other investigations? Were any promises made with regard to the non-prosecution and/or non-existence of related investigations of Vincent Papa?

A I told counsel for Vincent Papa that this encompassed what we in the Eastern District had going against
him and that to my knowledge there were no further cases
pending against Mr. Papa in the Eastern District of New York.

Q In fact, quoting from your affidavit on page 5, paragraph 10, you told counsel for Papa that "His pleas would satisfy related investigations of him in the Eastern District of New York"?

A I am not sure if the wording of that is quite accurate. I told him -- what I told him was that this is everything that I know about that's going against Vinny in the Eastern District of New York and he is covered on this stuff or these cases. I don't think the wording of that is quite accurate.

Q Did you prepare the affidavit filed in connection with these proceedings dated November 11, 1974?

A I prepared them in the sense that I sat -- I wrote down my recollection of these events, I discussed them with Mr. Cooney and Mr. Beller afterwards and they asked me questions on a number of aspects of it. I believe Mr. Cooney prepared the affidavit, which I read, checked for accuracy and I think I might have made one or two minor corrections on it and following that I signed it.

THE COURT: At that time you were not working directly in the office of the United States Attorney of the Eastern District, were you?

THE WITNESS: At the time of the affidavit?

THE COURT: No. At the time of these discussions with Mr. Musoff and Mr. --

THE WITNESS: No. I was with the Strike Force, which was a separate entity.

THE COURT: Would you, in the course of your regular duties, know or have reason to know what investigations or inquiries were pending against Mr. Papa in the office of the United States Attorney at that time?

THE WITNESS: Yes. It was joint filing and administratively everything was joint. I would have known about any other cases against Mr. Papa in that district.

Druker-direct

Q	In words or	in substance, 1	Mr. Druker,	were counsel
		pleas would s		
gations	were then know	m to you in th	e Eastern Di	strict of
New York				

A Yes.

Q And that representation --

THE COURT: To you or to the United States Attorney?

THE WITNESS: Well, when I said to me, it actually

meant the same thing. It meant any investigations -- I

represented that I had checked in the Eastern District of

New York; that these were the only two cases that I knew

of that were pending against Mr. Papa and that, therefore,

this plea satisfied everything that we had going in the

Eastern District of New York.

Q Now, during these discussions a pleading date was set, wasn't it?

A Yes.

Q And that was September 5, 1972?

A Yes.

Q Were your representations continuing to and including the pleading date?

A My representations as to what, everything?

Q Well, your representation regarding --

THE COURT: Why don't you go to the underlying

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question. Did you say anything additional or different to this defendant or his attorneys with respect to the plea bargaining between the date you have just testified to and the date that he pleaded guilty?

THE WITNESS: No, the question wasn't raised as to -- no one ever considered the question of what would happen if someone came in with a new case between the date of the finalization of the agreement and the date that he pleaded or was sentenced or surrendered.

THE COURT: Did you say anything to them on this subject--

THE WITNESS: No, I don't believe this was ever raised.

THE COURT: During that period.

THE WITNESS: No.

Q In any event you had told them that with regard to investigations known to the Eastern District of New York of Vincent Papa, the pleas that you were negotiating would satisfy each and every one of those?

A Yes.

Q We are talking now about mid-August of 1972, isn't that right?

A Yes.

Q You now know, do you not, that on or about July 17,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

Druker-direct 1 rgh 1972, a man named Joseph Ragusa made a statement to 2 a colleague of yours in the Eastern District Strike Force, 3 William Murphy? 5 Yes. A You are now familiar with the substance of 6 7 that statement, is that correct? 8 Yes. A MR. FISHER: May this be marked for identification 9 for purposes of this hearing, your Honor? 10 11 THE COURT: Mark it. (Defendants' Exhibit A marked for identification.) 12 MR. FISHER: May we have a stipulation from the 13 government that this is a true and accurate copy of the 14 15 statement submitted by Mr. Ragusa? THE COURT: It was in the possession of the United 16 17 States Attorney's office prior to September 5th, is that 18 right? 19 MR. BELLER: On Mr. Fisher's representation that it was a copy of the statement submitted on the previous 20 Žì occasion --22

MR. FISHER: I do so represent.

MR. BELLER: All right.

THE COURT: All right.

(Defendants' Exhibit A received in evidence.)

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	Q Prio	r to Septem	ber 5,	1972,	the plead	ing date
in th	he Papa ca	se, were yo	u spec	ificall	y advised	of the
exis	tence of J	oseph Ragus	a and I	his coo	peration	with your
depar	rtment?					

A Yes.

Q Were you further advised that Mr. Ragusa had implicated in allegations the defendant Vincent Papa?

A Yes.

Q. With regard to prior alleged narcotics transactions?

A Yes.

Q Involving somewhere around 50 kilograms of heroin?

A Yes.

.Q This then was known to you prior to September 5,

A Yes.

Q Was that disclosed to Vincent Papa or his counsel, the existence of that investigation?

A No, it was not.

Q Any investigation in the Eastern District of
New York of Vincent Papa would have been included in the
term "related investigation," true?

MR. BELLER: Objection, your Honor.

THE COURT: Sustained.

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Q In the context of the conversation had with counsel for Papa, the phrase "related investigations" referred to investigations, all investigations of Vincent Papa, isn't that right?

MR. BELLER: Objection, your Honor.

as to form, but the difficulty presented is that the state of mind, the subjective state of mind of Mr. Druker may become relevant in this hearing and I think we ought to take it subject to connection or subject to a motion to strike. If a better question were framed I would allow him to testify to what his state of mind or viewpoint or opinion was with respect to what this Ragusa investigation comprised.

MR. FISHER: I could do it a little more slowly, your Honor.

THE COURT: I will take it subject to connection and Mr. Beller may have an exception and a motion to strike.

Q Do you recall a conversation with Wallace Musoff where Mr. Musoff indicated that the plaintiff was concerned after having pled guilty to one or more charges in the Eastern District case and being incarcerated pursuant thereto he would have to fear subsequent prosecution on other charges?

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A Yes.

Q What was said by you in the context of those statements by Mr. Musoff?

A Mr. Musoff had referred to pieces of my conspiracy being taken out and causing him to be reindicted. I had told him that he was covered on the tax case, he was covered on the narcotics conspiracy and that no pieces could be taken out of that and used to form subsequent indictments, no overt acts out of my conspiracy nor the conspiracy itself.

Q And what about related investigations?

A I can't actually recall a discussion of that other than my simply telling him that these comprise my knowledge of everything that was going against Mr. Papa in the Eastern District and that he was covered insofar as these two cases were concerned.

Q I believe you previously testified today, and

I want to make sure that your last statement --

THE COURT: Don't make a speech to him. Just frame another question.

Q The conversation with regard to related investigations that you had with counsel for Papa included, did it not, a promise that his pleas would satisfy all related investigations of Papa known to the Eastern District?

A Yes.

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	Q	The	torm	related	li	nvestigat	ions	referred,	did	it
not,	to	any i	nvest	igation	of	Vincent	Papa:	,		

MR. BELLER: Same objection.

A In substance, that was my promise.

the objection to the question in the form which asked.

you did or did not know on August 18, 1972, of the existence of Exhibit A?

THE WITNESS: I knew of the existence but not the content.

Q Prior to September 5, 1972, you knew however of the substance of the content of Exhibit A, isn't that right?

. A Yes.

THE COURT: Did you know on August 18th that that exhibit had any connections with Vincent Papa?

THE WITNESS: No. My only connection with that had been as a notary. I knew nothing of the contents nor did I know really who Mr. Ragusa was until after August 18th.

THE COURT: How and under what circumstances did you learn of it after August 18th?

attorney that was handling Ragusa, was leaving the government.

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He had given his resignation and his cases were being 2 3 distributed throughout the office. At that time this particular matter was given to me in that I had had the cases against Vincent Papa and I believe I was given a

file on it. I was certainly given this exhibit.

THE COURT: What, if anything, did you do with that file?

THE WITNESS: I kept that file and I believe I opened my own file against Mr. Papa.

> THE COURT: And this was all before September 5th? THE WITNESS: Yes.

THE COURT: And you had it as an active file against Mr. Papa on September 5th?

THE WITNESS: No. I had Mr. Murphy's information, which I am not sure if it was a file or not. I know I didn't open a file on it until October 10th or 11th.

THE COURT: And then you opened it as an active file against Mr. Papa?

THE WITNESS: Yes. October 11th I believe was the date on which it was opened.

With regard to theactive file, Ragusa v. Papa, colloquially, your Honor, there were two aspects to the Ragusa information regarding Papa, isn't that right? There was revelations or allegations regarding to prior

conduct of Mr. Papa--

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That's correct.

Together with indications of possible subsequent conduct of Mr. Papa?

Yes.

The active file then related to those allegations of Mr. Ragusa regarding what was going to happen?

In the future?

Yes.

I believe so. Con't remember whether I actually separated them at that point or not.

Q But the reason for the formation of an active file was because Mr.Ragusa had indicated that there would be subsequent narcotics activities between him and Papa, isn't that right?

Yes.

MR. FISHER: No further questions.

THE COURT: Mr. Beller?

MR. BELLER: I will be very brief.

CROSS-EXAMINATION

BY MR. BELLER:

How was the tax investigation brought to Mr. Papa's attention?

I believe in June of 1972 I brought it to his

attention, I presume by advising one or more of his attorneys of its existence.

- Q Did you discuss that matter with your superiors?
- A Yes.
- Q Who was your superior at that time?
- A Mr. Dennis Dillon.
- Q What was the reason you disclosed that investigation to Mr. Papa?

A Number 1 -- there were two reasons. Number 1, I just couldn't disclose an IRS investigation without some authorization from the Internal Revenue Service itself and from Mr. Dillon and, number 2, it was what I felt to be an ethical obligation. I had represented in the course of the plea bargaining that the narcotics conspiracy against Mr. Papa was the only case that I knew about. Now another case came to my attention and I felt that I had a good faith obligation to reveal its existence.

THE COURT: Had IRS referred that to the United States Attorney for prosecution?

THE WITNESS: No. They had come directly to me.

They had a Strike Force program at that time under which-and they also had a narcotics program.

THE COURT: This special agent was assigned to the Strike Force?

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THE WITNESS: He was assigned either to the Strike Force unit or to the narcotics unit, but in either case he came directly to us rather than through the United States Attorney. My concern was that if I couldn't reveal this case to defense counsel then I would have to simply tell them that whole plea package was out.

- Q When you checked the files prior to August 18th, that is the Eastern District files, was the Joe Ragusa file disclosed to you in any way?
 - A Prior to August 18th?
 - Q That's correct.
- A No.

THE COURT: Had you ever heard of Ragusa prior to August 18th?

Murphy was in the next office to me. It was in the evening.

He asked me to come in. It was some urgency. I think he
introduced me to a Mr. Ragusa at that point. He said Mr.
Ragusa made a statement which he would like me to notarize.

I had Mr. Ragusa swear to it and I notarized it. Mr. Murphy
had at that time a piece of paper over everything except
for the bottom portion where it called for a signature.

That was my sole introduction to Mr. Ragusa and I had no
knowledge of the contents of the paper.

2 Q Then some time between August 18th and September 3 5th you learned of the contents of the affidavit, is that

4 correct?

A Yes.

THE COURT: Was that normal, for you to notarize affidavits in that office where they were covered by paper?

THE WITNESS: Only with Mr. Murphy. Mr. Murphy—we used to tease him about it a great deal. He was extremely secretive and paranoid. He didn't want anyone else in the office to know anything about his case or what he was doing. It struck me as curious that he conspicuously put a piece of paper over the affidavit and left the bottom blank since I had the same clearances that he had, but nevertheless I notarized it and joked about it with the other attorneys in the office the following day, I believe.

- Q Why were you the one who notarized that affidavit?
- A I was either the only notary in the office at that point or one of two and I was in the next office to Mr. Murphy.
- Q So it had nothing to do with your own investigation is that correct?
- -Q Some time between August 18th and September 5th

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you learned of the Ragusa file, is that correct?

Yes.

Did you have a conversation again with Mr. Dillon about that information?

Yes.

What was the substance of your conversation with Mr. Dillon?

A At that point I was faced with the same situation that I had with regard to the tax case. I asked Mr. Dillon whether or not we had an obligation to reveal this to the defense attorneys and we decided that for two reasons we didn't, one being that it would jeopardize -- that this related to information on something that was to happen subsequently and that if we advised defense counsel the new narcotics, transaction would in all probability not take place. Secondly --

THE COURT: This is a narcotics transaction that you thought he was going to conduct from the federal prison in Atlanta?

THE WITNESS: No, this is prior to his surrender. We had been -- we had information that Mr. Papa intended to do one last big narcotics transaction before he surrendered. I was told before the date of his plea that I could expect some scrt of a request for an adjournment on his surrender

allow him the opportunity to conduct this transaction.

So I felt that this would jeopardize security for me to reveal this and I further felt that this was something that was going to happen in the future. I wasn't actively investigating any past allegations wherefore Mr. Dillon

Q In the discussion that you had with the judge in Westbury, was anyone else present?

and I agreed not to advise defense counsel of this.

A The judge's law clerk, to my best recollection, myself and I don't believe anyone else was present. I am not a hundred per cent certain on that.

- Q How long did you spend with the judge?
- A Five minutes.
- Q What was the substance of the conversation with the judge?

A I told the judge that we had this offer from Mr.

Papa. I told him that my narcotics case was extremely

weak and probably a certain loser in that Stanton Garland

had escaped. I told him that we had a very strong case against

Mr. Papa, which was the only reason for the plea. I told

him of the offer of defense counsel and asked whether

he would go along with our recommendation of five years.

The judge stated that he thought that this was extremely

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Q In your affidavit you state that "With respect to other investigations counsel to Vincent Papa were put on actual notice that my representations referred only to Eastern District of New York." Would you explain to the court how you limited the agreement.

A As I testified on direct I stated on a number

of occasions that this is all that we have got going against him in the Eastern District. This covers him against everything that we have going against him in the Eastern District. Somehow the million dollars or thereabout that had been received from Mr. Papa earlier in the year. I believe I was asked about it and I stated "Look, you fellows know more about it than I do. I read about it in the newspapers. He is asking that he put a hold on it. It is in Southern District's bailiwick and I don't know what, if anything, they are going to do with it" and that's it.

Q Did any one of Mr. Papa's attorneys or Mr.

Papa himself through someone else ever ask you to check
across the river in the Southern District as to pending
investigations?

A No.

Q Or as to an agreement by the Southern District to join in the plea bargaining?

A I was not asked to check with any other jurisdiction to see what, if anything, was going on against Mr. Papa.

MR. BELLER: I have no further questions.

MR. FISHER: Briefly, your Honor.

THE WITNESS: Nor did I do so.

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REDIRECT EXAMINATION

BY MR. FISHER:

Q In your conversation with Mr. Dillon with regard to the so-called Ragusa investigation, Mr. Druker, the two prings of the Ragusa information were discussed between you and Dillon, isn't that right?

A That's correct.

Q The one relating to the narcotics activities alleged by Ragusa about Mr. Papa in January roughly and February of 1972 being the past --

Yes.

And with that there was no problem about disclosing to Mr. Papa?

A No, there wasn't.

Merely by virtue of the fact of disclosing the informer?

Yes. A

That was the only problem? Q

Yes.

Q You told the court I believe in response to the court's questions that there were allegations that Mr. Papa would be dealing in narcotics between the date of his plea and the date of his surrender.

Yes. :: 1.1 1 :: 1.1

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	Q	And	theso	allegations	came,	did	they	not,	from
Mr.	Ragus	a?							

A I believe so. I received them through an agent of the BNDD, who I am certain, although I don't recall for a fact, received them from Mr. Ragusa.

THE COURT: When did you get it from the BNDD?

THE WITNESS: It was shortly before Mr. Papa's plea.

Just shortly prior thereto.

THE COURT: After August 18th?
THE WITNESS: Yes.

Q In the August 18th conference when there was a pleading date set for September 5th, was there also a surrender date agreed upon then?

A No. I think -THE COURT: I thought you told me there was.

A The September -- on August 18th, thinking back, we weren't even able at that point to fix the plea date.

We knew that he would plead and we knew that he would surrender and we were reasonably certain what the terms of the sentence would be. I believe Judge Travia was on vacation at that point and we left it that I would set up the earliest possible surrender day -- the earliest possible plea date with Judge Travia. In fact I am certain he was on vacation because the individuals who were surrendered on

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of the other judges, so at that point my best recollection is that the dates were not fixed.

THE COURT: Was there an understanding that

the following Monday surrendered to Judge Rayfiel or one

THE COURT: Was there an understanding that sentence was to be fixed on the date of the plea without the necessity of any pre-sentence report?

THE WITNESS: Yes. It was agreed that counsel for Mr. Papa would waive a pre-sentence report.

THE COURT: And that you would also on behalf of the government?

THE WITNESS: Yes.

THE COURT: I have to take a short recess. Is there very much more for this witness?

MR. FISHER: I have a few questions, but I think a recess would be appropriate.

THE COURT: All right.

(Recess.)

MR. PISHER: May I proceed, your Honor?

THE COURT: Yes.

BY MR. FISHER:

Q Mr. Druker, referring again to the information through the agent from Ragusa about a possible subsequent narcotics transaction involving Mr. Papa, was a surveillance conducted of Ragusa's home as a result of that investigation?

MR. BELLER: No. We are just concerned about discovery.

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THE COURT: I know what you are concerned about.

MR. FISHER: Perhaps we could stipulate and I would

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have no further questions.

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MR. BELLER: If it is in the affidavit --

THE WITNESS: No --

THE COURT: The witness wants to indicate that isn't so.

THE WITNESS: I don't remember the exact term being eight days, and I hope my affidavit isn't to the contrary, but it was strictly limited to Mr. Ragusa's residence. At least that's what my directions were. I have no way of knowing what the surveillance was, but I know I instructed Agent Salvamino to conduct a 24-hour a day surveillance on Mr. Ragusa's residence, period.

. THE COURT: And he found no evidence indicating that a transaction was underway?

THE WITNESS: That's correct.

And in fact during that intensive surveillance Mr. Ragusa fled the jurisdiction, isn't that right?

Yes.

MR. FISHER: No further questions.

MR. BELLER: Your Honor, may I have just one

moment?

THE COURT: Certainly.

(Pause)

RECROSS EXAMINATION

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BY MR. BELLER:

Q Mr. Druker, in paragraph 12 of your affidavit
you state "In September, 1972, either shortly before or
after Papa's entrance of the plea, I was advised by agents
of Drug Enforcement Administration that they had information
that Ragusa had again been asked by Papa to act as a
stash man." What is your best recollection at the moment
as to the date you received that information?

A I couldn't, of course, fix an exact date. My best recollection would be some time between August 25th and September 1st.

Q You do believe it was before the plea, though, at this time?

A Yes.

MR. BELLER: No further questions, your Honor.

THE COURT: All right.

MR. FISHER: Nothing further, your Honor.

THE COURT: You are excused.

(Witness excused.)

MR. FISHER: The defendant Papa rests, your Honor.

THE COURT: All right. The government?

MR. BELLER: The government has no witnesses, your

Honor.

THE COURT: All right. The matter is marked fully

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

2 submitted.

Now, while I have you here --

MR. FISHER: Excuse me, your Honor, might I just do this. You recall, I know, that in the other proceedings, the grand jury testimony of Ragusa on July 18, 1972, was marked as an exhibit in that hearing. Could that be deemed marked for the purposes of this hearing as well?

THE COURT: Yes, but if you want that you ought to tell me what you are offering it to show so that I don't get the factual context too mixed around.

MR. FISHER: Surely, your Honor. To show that at least on July 18, 1972, there was an Eastern District investigation of Vincent Papa with regard to the Ragusa allegations.

THE COURT: I don't think that is disputed.

Is it?

MR. BELLER: There was a matter in the office.

I am not sure what it would be called, but there was.

If there was grand jury testimony, then there was grand jury testimony.

THE COURT: When you take a witness, an informant and interview him and make an affidavit telling what he knows, have a file and put it before the grand jury, ordinarily: I would call it an investigation.

BEST COPY AVAILABLE

MR. BELLER: Whether it was intelligence information or intelligence or a case, at the moment I wouldn't say, but there was something in the office.

THE COURT: All right.

Now, I wanted to go back on some of the other loose ends that we have here. I am preparing and probably will file late today or early tomorrow a memorandum determining the motion of Vincent Papa, Jr. with respect to the suppression of the million dollars. Basically I am concluding with respect to him that he doesn't have standing to suppress the evidence.

I believe you indicated to me this morning, Mr.

Fisher, that as far as you were concerned you and your client consent to a separate filing of my formal findings of facts and conclusions as to the suppression to be done in the near future.

MR. FISHER: Yes, your Honor.

THE COURT: And you don't care if they are done by Monday, as long as you know what the bottom line is.

MR. FISHER: That's all that counts at this point, your Honor.

THE COURT: I am relying upon that because I have a problem of taking care of some of these matters before we begin our presently scheduled trial.

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Now, we will be in recess briefly. I am closing this particular hearing, but I ask counsel to please approach the side bar.

MS. ROSNER: Your Honor, before we recess we have a couple of loose ends that have been made into neat bows.

THE COURT: Let me hear what your neat ends are.

MS. ROSNER: Mr. Lopez and I went to Mr. Cooney's office at 2 and he very graciously afforded us access to the agents who indicated what their testimony might be at a Wade type hearing and showed us the photos involved in the interviewing of the witnesses Raguda and Budy after interviewing the agents and getting a preview of how the hearing would be, I at least on behalf of Mr. Stanzione have concluded that we need not take up your Honor's time with it. We are fairly satisfied concerning the identification procedures. So I would withdraw my motion with your Honor's permission.

THE COURT: All right, I think I ought to direct
Mr. Beller to inform all of the Assistant United States
Attorneys that occasionally by revealing material matters
can be shortened. The motions can be withdrawn.

MR. LOPEZ: Most respectfully, your Honor, in respect of Vincent Papa, Jr. I make the same application.

rgh A 118 72a
THE COURT: The applications are granted.
Mr. Beller and Mr. Fisher and the court reporter,
please.
respect of Cancert Benziers, 2 Tax: the same opulations:

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(In camera discussion at the side bar.)

I expect to file a memorandum and order very shortly in connection with our discussions of this morning and I would really ask both of you to stand by and it will be given to you. You can stand by here in the courtroom or if it is more convenient for you to go to Mr. Beller's office. You will cause less suspicion that way if you do that. You can have the defendant Papa kept in the building until 4:30 if that is helpful to you.

> Furthermore, I am marking my memorandum sealed. MR. FISHER: Thank you, your Honor. Thank you very

THE COURT: But a copy of it will be given to each of you.

MR. BELLER: Should this portion be sealed as well?

THE COURT: Yes, and anything in chambers likewise and I trust that our docket sheets are complete. Our docket sheets in the Clerk's office show what is sealed and not sealed and I charge both of you gentlemen as lawyers in this matter to see to it. I am afraid there are some papers which the court has received which may not have gotten on the docket sheet at all. They have simply been held in chambers and dealt with by the court. In view of your

present attention I want to have a full and correct docket sheet. Of course I want you to also and I am sure the government wants to.

MR. BELLER: Sure.

. Where will you both be?

THE COURT: I would also like you to keep me fully apprised so we know where we are going and what we are doing.

MR. FISHER: I would like to confer with Mr.

Papa downstairs for about a half hour and then I will go to

Mr. Beller's office.

THE COURT: All right, then I will have my clerk telephone Mr. Beller as soon as I file my memorandum, which is only held up by mechanical difficulties.

MR. BELLER: Thank you, your Honor.

THE COURT: Will you each confer with the court's minute clerk to make certain that our dockets are correct.

(End in camera discussion.)

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(In open court.)

THE COURT: All of you and the other defendants are to be here in person Monday morning at 10 o'clock.

One other thing while I have you here. Of course we don't have all the attorneys.

MR. FISHER: Everyone but Mr. Laifer.

THE COURT: We always have the question of challenges and I think you ought to talk with each other about challenges. Since we are going to have a sequestered jury and I am going to have to grant excuses for people whose circumstances in life don't permit them to be sequested. I don't like to make it too onerous. On the other hand I think as attorneys you should all sit down with each other and see what you think is a fair arrangement and don't confront me the last minute with the problem on Monday morning. So I suggest you address your selves to that when time permits. Otherwise we will be in recess until Monday morning.

So my record will be complete, I am marking Dr. Lewis Blondins certificate dated January 15, 1975, as a Court's exhibit in this hearing.

(Court's Exhibit 1 marked in evidence.) THE COURT: All right, Monday morning.

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	UNITED TATES DISTRICT COURT						
2	SOUTHERN DISTRICT OF NEW YORK						
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4	×						
5	United States of America						
6	-v- x						
7							
8	Virgil Alessi, x S 75 Cr. 772						
9	Defendant.						
10	, x						
	x						
11	Now York N. V						
12	New York, N. Y.						
13	January 19, 1976						
14	12 noon						
15	Room 128						
16	Before:						
17	Hon. Dudley B. Bontal,						
18	District Judge.						
19							
20	APPEARANCES:						
21	Thomas J. Cul.ill, Esq.						
	United States Attorney; Jumes P. Lavin, Esq. and						
22	Ronald L. Garnett, Esq.,						
23	of counsel.						
24	Nancy Rosner, Esq.,						
25	. Attorney for defendant.						

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THE COURT: All right, counsel; this is

United States v Alesi.

I understand there is an application, Mrs.

Rosner.

MRS. ROSHER: There is, your Honor.

THE COURT: Will you please indicate what

it 15.

MRL. ROENER: I wunt to thank the Court for hearing us on such short notice. I think for the record it should reflect that this morning the Court of Appeals heard my application -- let me withdraw that -heard the Government's application to dismiss the notice of appeal that I had filed, and the Court decided that the appropriate thing to do was to issue a mandamus to the District Court, ordering either that the Court in its discretion sever Alesi from the main indictment, or hold pretrial hearings requested by the Government on the issue of a due process claim which Alesi says will bar his trial herein, and dispose of those motions pretrial, and permit a pretrial appeal; so my contention, your Honor, is, in the exercise of the Court's discretion under Rule 14 of the Federal Rules of Criminal Procedure to sever Alesi from the main indictment for these reasons. As the Court probably knows from having

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entertained various motions in the proceedings in the case, approximately 8 defendants will be proceeding to trial, including Mr. Alesi. The Government estimates that the case will take 4 weeks to try, and from the bits and pieces of information that I have been able to garner, your Honor, I would estimate that probably there are 5 or 6 co-conspirator witnesses, and it will be a major production as conspiracy trials go -- at least one of the lawyers, "r. Philip Sutley, who is the attorney for Mr. Blanchard, is travelling from Maryland to attend this triel, and has rearranged his schedule accordingly, and undoubtedly every other lawyer in the case has arranged his schedule to be prepared to proceeding with picking a jury tomorrow. Well, Alesi, Judge, if I get a good view of the case against him, has two co-conspirators and virtually no corroborati n; and the case against him, if he is tried separately, will probably not take more than a few days -- I could be away off base, your Honor, but that is what I have been able to Larner from my own preparation of the case.

In addition, Judge, there is another factor to be considered--really dispositive of this whole kettle of fish--and that is the Pappa appeal, which was argued in Leptember, and which has not been decided yet; and it

 would just seem, Judge, that if Alesi was severed and a date set for the disposition of his motion on the hearing that the Government wants, the Court would have the time to consider those motions, and perhaps the Court of Appeals would intervene and hand down a decision that we are all waiting for; and so it just seems to me, your Honor, that all of the considerations warrant the exercise of your Honor's discretion in favor of severing alesi and trying him separately.

The Court of Appeals has spoken pretty clearly that the motion ought to be disposed of pretrial, and it seems to me the essiest way to do this, without discombobulating 7 other lawyers and their schedule is to sever the Alesi proceeding.

he is not named in the conspiracy count, the Court will have to sit there and keep giving curative instructions every time somebody testified on the conspiracy count and doesn't testify about alesi.

It just seems to me, Judge, that all the factors weigh in favor of severance; and I would waive any 6-month rule on the speedy trial claim that might arise because of the attendant delay in this trial.

THE COURT: In view of that, Mrs. Rosner,

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your client will also consent to that waiver of the 6-month rule.

MRS. ROSNER: Without a doubt--and I will have him sign a statement to that effect if your Honor so desires.

MR. LAVIN: Your Honor --

This COURT: All right; I am interested in how long will it take the Court of appeals to decide it. I think somebody said--it wasn't you, Mrs. Rosner--they haven't seen the decision, and I haven't seen the decision.

MRS. ROSNER: When Mr. Gallina and Mr.

Hoffman appeared before your honor at the conference
on the 9th, they had not yet received the notice of the
disposition, and I hadn't, so I think one of the two--I
have the minutes and I forget who it was--asked the
Court to re-enter it so that it could be filed. I
think they filed the notice of appeal the next day, and
I notified Mr. Lavin that it was filed, and he crossmoved to dismiss the appeal; and I might add that I
was not seeking a mandamus; I just wanted it to be treated on appeal as an appropriate remedy.

THE COURT: I understand.
What do you say, Mr. Lavin?

MR. LAVIN: Your Honor, first of all I think that I am forced to give alittle outline of the proceedings in this case.

THE COURT: Well, I think Mrs. Rosner is quite correct on this--that this defendant was named only in substantive counts--he is not named in the conspiracy count; is that correct.

MR. LAVIN: That is correct, your Honor.

THE COURT: He is named as a co-conspirator and not as a defendant.

MR. LAVIN: That is correct. If I might add, your Honor, from 1900--say from 1908 to 1972 there was a group in Queens--Vincent Pappa, Virgil Alesi and Anthony Passero--who distributed heroin in this case to all of the named defendants that the heroin eventually got to, and the proof at trial would establish that although Alesi is not in the conspiracy count he was part of this group, and he is a major--he was a major violater. Every piece of evidence offered at this trial will affect Mr. Alesi, and apain we would--

THE COURT: What do you mean, it "will affect Mr. Alesi"?

MR. L.VIN: Well, your Honor, the conspiracy will show that the heroin was coming from Virgil Alesi,

anthony Passers and Vincent Pappa, 1 rom 1969 to 1972.

THE COURT: Let me ask you this, Mr.

Alesi is charged in the indictment, I think in count 5 with the sale of a quarter of a kilo of heroin in November 1970, and in February 1971 with the sale of an eighth of a kilo of heroin, and in December 1971 with a quarter of a kilo of heroin, and in the summer of 1971 on two counts.

MR. LAVIN: That is correct, your Honor; but the evidence will also show that in addition to these charges, as they would be properly admissible on the trial, Mr. Alesi had on man; other occasions acted or directed Mr. Manfredonia to take delivery, or someone else to take delivery.

THE COURT: Well, that has a bearing, I suppose, on his intent.

MR. LAVIN: Yes, your Honor.

THE COURT: __ His knowledge and intent at the time of these substantive counts.

MR. LAVIN: And the other witnesses will testify to receiving the heroin from the people who got it from Mr. Alesi, your Honor.

The occasions where Mr. Alesi directed someone else to deliver the heroin are--I mean we are talking

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in addition to those counts where he himself delivered heroin to Mr. Muniredonia or Mr. Passero.

Alesi is severed in this case, he has obtained-what he has gotten so far, he has jotten a free ride; but that is besides the point really; the point is that the Government will try this case tomorrow with the same proof as it would offer against Mr. Alesi if he was severed; the Court will be trying the same case twice.

THE COURT: I don't like that.

MR. LAVIN: And I don't believe, your Honor, after examining the evidence, that it is going to be a 4-weeks trial in this case.

THE COURT: All right.

MR. LAVIN: In either event it is going to be a trial which is going to last approximately two and a half to three weeks.

I might add that a pretrial hearing on Alesi's motion would take at the most, I think, a day or a day and a half, and we are going to resolve this issue one way or another.

The only reason I say that is because I have to look at those papers again to see where Mr. Druker-

case.

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MR. LAVIN: Yes, it is.

THE COURT: Which is up on appeal.

MR. اسا Yes it is, your Honor.

THE COURT: As I recall, Judge Brieant

Is this close to the Pappa

did not find double jeopardy in Papa.

THE COURT:

pardy; he also found that any promises did not bind the Southern District, and in Mr. Alessi's case it is a little different because Mr. Papa suffered some detriment because of his plea--he fot 5 years in jail; Mr. Alessi did not get any time in jail; he was guaranteed that before that he wouldn't get any time, so there are some differences.

Papa was the lead man. He was bargaining for everybody else. He made a lot of the deals in the Eastern District that Mr. Alessi would get this, Mr. Pessaro would get this and somebody else would get this, and if this happened he, Vincent Papa, would take the plea where he would receive 5 years.

Your Honor, I think, unfortunately, Mr.

Alessi is not entitled to a severance; I think he should
be tried with these people. He belongs there.

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THE COURT: I think, on that point, he is not named in the conspiracy count; that he is only named in the substantive counts--

MR. LAVIN: He is named as a co-conspirator.

The COURT: He is named as a co-conspirator.

ator, so that there is a question which I suppose could be raised on the trial.

MR. LAVIN: Your Honor --

THE COURT: I think I must say that the decision of the Court of Appeals to me is quite incredible, on the basis of which these other defendants, including one of the defendants who made a motion under the six-month rule about not getting a prompt trial, and I am not prepared to delay the trial; therefore my only alternative, as I understand it, from the Court of Appeals is to grant Mr. Alessi a severance.

MR. LAVIN: Would your Honor consider trying the defendant first and then proceed to the other trial?

THE COURT: No. I am afraid we have to proceed to trial tomorrow with the remaining defendantants, so I will grant the severance, and I will do it, and I understand that Mrs. Rosner will obtain a statement from Mr. Alessi, waiving the six-month rule.

MRS. ROSNER: I will, your Honor.

THE COURT: I think that is my only alternative on this. I do not see any other alternative, and

we will proceed that way.

MRS. ROSNER: Thank you.

THE COURT: Okay.

(Hearing closed)

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE NEW YORK, N.Y. - 791-1020

1	sls A 133						
2	UNITED STATES DISTRICT COURT						
3	SOUTHERN DISTRICT OF NEW YORK						
4	х						
5	UNITED STATES OF AMERICA, :						
6	vs. : 75 Cr. 772						
7	VIRGIL ALESSI, et al., :						
8	Defendants. :						
9	x						
10	Before:						
11	HON. DUDLEY B. BONSAL,						
12	District Judge.						
13	New York, February 11, 1976 2.15 o'clock p. m.						
14							
15	APPEARANCES:						
16	THOMAS J. CAHILL, Esq.,						
17	United States Attorney for the Southern District of New York; BY: JAMES P. LAVIN. Esq.						
18	BY: JAMES P. LAVIN, Esq., Assistant United States Attorney.						
19	NANCY ROSNER, Esq.,						
20	Attorney for Defendant Virgil Alessi.						
21							
22							
23							
24							

	THE	CLERK:	United	States	of	America	versus
Virgil	Alessi.						

MS. ROSNER: Good afternoon, your Honor.

MR. LAVIN: Good afternoon.

THE COURT: All right, Ms. Rosner, we have had the trial and I want to have whatever hearing is necessary

MS. ROSNER: Your Honor, as I stated in the Court of Appeals, I felt the proceedings both before Judge Brieant here in the Southern District and Judge Judd in the Eastern District fairly presented the factual matters that Alessi desired to develop, and I understand that the Government is now taking the same position.

so we are prepared to stipulate that the proceedings in those two cases be the basis for the Court's factual conclusions here in Alessi's due process motion; and I think Mr. Lavin is in agreement with that, your Honor, which would dispense with the needs for further live testimony.

THE COURT: All right, what do you say, Mr.

Lavin?

MR. LAVIN: The Government does not intend calling any witnesses, your Honor.

THE COURT: And you stipulate also that I should

consider this matter on record before Judge Brieant and Judge Judd and -- who was the other one?

MS. ROSNER: Just those two, your Honor.

THE COURT: Just those two?

MR. LAVIN: And whatever papers were submitted in support of the motion, affidavits and myself --

THE COURT: There was a record here involving Mr. Druker's statement, I believe, and you think that covers it?

MS. ROSNER: Yes.

THE COURT: So far as the alleged plea bargain?

MS. ROSNER: Yes.

grand jury testimony of a man by the name of Garland?

MS. ROSNER: Yes, your Honor.

whether it be minutes of hearings or documents of other types that have been submitted to Judges Judd and Brieant, but I will endeavor to put together for the Court and agree with Mr. Lavin that it is a complete set of all of the papers that were submitted either to Judge Brieant or Judge Judd.

THE COURT: I have this fat pile right here, and if you two will look at it -- have you looked at it?

MS. ROSNER: We have.

THE COURT: You have looked at that?

MS. ROSNER: Mr. Lavin was good enough to leat

us take a look at that, so I know --

THE COURT: Yes?

MS. ROSNER: -- that there is more than that, your Honor. I will endeavor to get a complete set of all the other papers and minutes that have been presented to those two judges so that the Court will have a complete file.

THE COURT: When will you do that?

MS. ROSNER: When I leave here, your Honor, I am going to call the attorneys who were responsible for those other cases and ask them to transmit to me, because I don't have in my office a full set of the other papers, but I will do that as quickly as I possibly can.

THE COURT: And you will sit down with Mr. Lavin on that, is that the idea?

MS. ROSNER: Yes. Mr. Lavin and I will confer and agree that that is everything that has been submitted, and hopefully, Judge, I can have it for you no later than Monday. I just have in mind the holiday which is tomorrow.

MR. LAVIN: Monday is a holiday too.

MS. ROSNER: Oh, that's right, Monday is a holiday too. If we can have until Tuesday, Judge, I think I can get it to you.

THE COURT: One thing. What was the proceeding before Judge Judd? That was in an Eastern District indictment?

MS. ROSNER: Yes.

what happened there was Alessi was indicted there in a narcotics indictment charging conspiracy and . substantive counts, and Judge Judd dismissed the indictment as to Alessi holding in that proceeding that the same promise that had been made to Papa had indeed been extended to Alessi, and that Alessi had relied on it in pleading quilty.

Now, the minutes of those proceedings your Honor has in our original motion papers here, and the only question that was not before Judge Judd, which your Honor has here, is whether the Southern District was encompassed within what was admittedly the Eastern District agreement extended to Alessi. That's the only way that this case differs from the case in front of Judge Judd.

MR. LAVIN: Well, your Honor, I except from that. I think it is an entirely new proceeding. I don't think Judge Judd's opinion binds your Honor in any way

whatsoever. I mean, the facts -- I wasn't there; no one from the Southern District was there.

THE COURT: Well, I had a problem about that.

These were the minutes before Judge Judd on

October 17, 1975, right?

MS. ROSNER: Yes, your Honor.

THE COURT: I should note this in Judge Judd's statement at that time:

"With respect to Mr. Papa, I think there is
so much overlap between the two indictments that
while the Government has offered some evidence that
he may have thought that he would get immunity only
from matters directly related to the Loria conspiracy,
and the witnesses who were then known to the Government, I don't think the present conspiracy which has
quite a number of the same defendants in it, was
covered by it.

"With respect to Mr. Allesio" -- I think that
was supposed to be "Alessi" -- with respect to Mr.
Alessi's plea under the separate superseding information, none of the present defendants were named
as co-defendants, not even Mr. Papa was named as a
co-defendant, and I don't see that the premise that
was made to him in connection with that indictment

would cover an indictment that was as broad and covers as many of the present defendants as are included in 75 Cr. 687."

MS. ROSNER: Your Honor, after the Court made that statement the Government, if you will read on, Judge, and the defense counsel went into Judge Judd in camera, and the Government, as it were, confessed error on that point, because, indeed, they had to concede that Alessi's plea to the information which Judge Judd had spoken about. was in satisfaction of the same underlying indictment that Alessi and Papa were both named in, the identical indictment, and the drawing of this information was merely to give Alessi protection with respect to a State case.

Anyway, Judge, the long and the short of it

THE COUFT: I am looking at that, and you said something about "in short, Judge" -- this is you -- "Mr. Alessi's plea to the superseding information was in satisfaction of 75 Cr. 473, and we submit for the purpose of these motions, your Honor, that was identical to a plea to that indictment."

And Judge Judd then said:

"What I would do, then, is let him withdraw his plea."

case as to Alessi ~-

MS. ROSNER: But he didn't, Judge. What happened was that the Government in recognition of the fact that Alessi's plea to the information was, in fact, in satisfaction of the underlying indictment, nollied that

THE COURT: The reason I am raising this, as you can see, I want that quite clear as to what your position is with reference to these minutes.

MS. ROSNER: Yes.

Well, let me make my position clear, your Honor:

We contend that Alessi has already litigated with the Government, albeit Mr. Lavin says he wasn't there, but he has litigated with the United States Attorney's office in the Eastern District the following issues:

Was the promise -- let's just call it promise for short -- which was extended to Papa extended to him?

Did he plead guilty in reliance on it?

Now, it seems to me that the proceedings before

Judge Judd establish those two questions in the affirmative

for Alessi; that is, the promise was extended to him.

I think the Government even conceded that in their papers

in the Eastern District, and Alessi pled guilty in

reliance on it, which Judge Judd found as a matter of

fact.

so I don't think the Government here has the right to relitigate it. I think they are collaterally estopped from taking Alessi over the coals again on those two questions.

The only distinction, your Honor -- and, as I say. Alessi was nollied in that case on the Government's motion after we went back into chambers in front of Judge Judd to correct a factual misunderstanding about why he pled to this information instead of to the conspiracy.

cerned, as far as I could understand Mr. Druker's testimony, that was to cover all investigations then pending in the Eastern District, I don't know what the date was, March 1972, and there was some statement in there that it didn't cover stealing computer machines, or something like that, and I think there was also a statement that if he was engaged in any other criminal matters other than that conspiracy, it did not cover that. That's the way I rather understood it.

Having tried this case of these co-defendants, there seems to be two points of contact. I think Scott's Pub is one, and the other seems to be Mr. Huff, and those two things hit me.

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MR. LAVIN: If your Honor will recall, the
connection with Huff was not through Mr. Alessi or Mr.
Papa or any of these people. It was through Patsy
Anatalio and Mr. Manfredonia, and there was no showing at
all
THE COURT: That's right. The source of
supply seemed to go back, didn't it, to Scott's Pub?
MR. LAVIN: That's right.
acupm, and that was Paper, as I recall :

THE COURT: And that was was one of them, and Mr. Alessi was alleged to be another one, but there is testimony about that and Huff. As I remember, he was in the next rung down.

MS. ROSNER: Your Honor, basically --

MR. LAVIN: I'm sorry, your Honor, if I may look at that exhibit, please?

THE COURT: Sure.

MS. ROSNER: Basically, your Honor, our theory is this:

The nature of the promise -- and I don't think this is in dispute -- was that Alessi would not be prosecuted for that conspiracy or for any overt act which was part of that conspiracy.

Now, the conspiracy that he pled to was a several years old conspiracy. Now, the overt acts

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that could have or did happen in the course of that 2 conspiracy might have been made, and they might not all, 3 every specific crime, have been known to the Eastern 4 District at the point in time when this deal was made; but 5 he was given a kind of blanket policy for substantive 6 offenses growing out of that conspiracy --

THE COURT: Out of that conspiracy?

MS. ROSNER: That's right.

THE COURT: But let me ask you this:

Asuming -- I don know -- assuming that Papa and Alessi were suppliers, and they had a big stash in Scott's Pub, or some place, and from that stash they distributed to a lot of people in the Brooklyn conspiracy and from the same stash they distributed through a lot of people, including these people who testified in the last trial, in the Bronx and other places, is it your point that plea bargaining would cover the second conspiracy?

MS. ROSNER: Absolutely, there is no doubt about that; and the Government here and the Court of Appeals, Judge -- I think this point is really what impressed them more than anything else --

THE COURT: Well, we don't know what impressed Maybe you impressed them. them.

MS. ROSNER: I gave up thinking long ago that I

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had any special advantages.

You see, in this indictment they don't name Alessi in the conspiracy.

THE COURT: I know.

MS. ROSNER: And the reason they don't do it is that there would be an absolute jeopardy bar on its face.

THE COURT: That's right.

MS. ROSNER: They can't, Judge, because it's the same conspiracy.

If I recollect now -- it has been a while since I looked over my motion papers -- either five or seven co-conspirators with the Eastern District case, same time period, same relative position within the organization as a supplier, same geographical area of distribution - there is no doubt that under the Mallah case this conspiracy would be held to be the same as with the Eastern District.

So what is Alessi indicted for here? He is indicted for substantive offenses. Substantive offenses growing out of what? Growing out of that conspiracy.

Now, Alessi can't help it if the Eastern

District didn't know at the time they made the agreement

how many overt acts there were or how many substantive

offenses there could have been; but the promise made to

him was: Take this plea and we will not prosecute you for

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that could have or did happen in the course of that
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substantive offenses growing out of that conspiracy.

MR. LAVIN: Your Honor, if I might respond to

THE COURT: Yes?

MR. LAVIN: Mrs. Rosner keeps referring to substantive offenses growing out of this conspiracy.

THE COURT: Yes.

MR. LAVIN: By any reading of those minutes of those pleas, there was never any mention of substantive offenses. What Mr. Druker said was overt acts. Mrs. Rosner is telling the Court that Mr. Druker told Mr. Alessi that he was given blanket immunity for all crimes, narcotics crimes he committed.

Your Honor, there is no reading in law anywhere that says that a conspiracy and substantive count are the same. They are different. And Mr. Druker, we submit, didn't have the power to do it, and he didn't do it; and I think the best illustration of that is that that million dollars prominently mentioned in those minutes was in the possession of the Southern District at the very same time, and Mr. Druker was asked about that, and the minutes will reflect he said, "That's a Southern District matter and I have nothing to do with it."

Now, under Mrs. Rosner's reasoning, that

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million dollars is an overt act, and therefore the Government, the Southern District of New York is estopped from prosecuting him for that crime because it grows out of what she claims is an overt act.

Substantive crimes and overt acts don't necessarily mean the same thing, and the substantive crimes that Mr. Alessi was charged with are different; they weren't known to Mr. Druker at the time of the Eastern District plea, and there was a Southern District witness, and it was clear he wasn't binding the Southern District and he didn't have the power to do it.

THE COURT: What is troubling me --

MS. ROSNER: May I answer those specific points?

THE COURT: Let me tell you what is troubling

MS. ROSNER: Let me just dispose of that first because it is so grossly misleading --

THE COURT: No. Just relax.

What is really bothering me is that if a man has a stash of heroin or a supply of heroin, what is to keep him from having one group of people to distribute it in Brooklyn and another group of people who are going to distribute it in Manhattan, and if it follows that that happens, is that bound to be the same conspiracy?

MS. ROSNER: But it is the same conspiracy here, Judge. They have conceded that by not indicting him for that conspiracy.

Under the test laid down in Mallah, Judge, there is no doubt but that this is the same conspiracy as in the Eastern District. Now, maybe the Government doesn't like the bargain that they made, and Mr. Lavin's distinction between overt acts and substantive offenses is absurd.

An overt act need not be a criminal offense. It can be any act, like making a telephone call or some other innocent act --

THE COURT: I told the jury that.

MS. ROSNER: But, of course, the substantive offenses committed in the course of that conspiracy are overt acts of that conspiracy, and that's what he's indicted for here, and that's what the Government bargained away when he took a plea there. He may not like the agreement, but that's the agreement that they made with the man. They said, "Take this plea and we will not prosecute you for overt acts committed during the course of that conspiracy."

Now, in the Eastern District when they reindicted him in front of Judge Judd, they had new witnesses; they had witnesses not known to the Government at the time

this plea was taken in 1972, but they were new witnesses about the same old conspiracy and about the same old over acts committed in furtherance of it, and they have bargained away their right to prosecute him, and Judge Judd so found, and the Government so agreed by nollying.

MR. LAVIN: Your Honor, frankly, I didn't have the second half of the minutes in chambers, but my understanding is that Mr. Alessi wasn't dismissed; he was nollied.

MS. ROSNER: That's right, on the Government's motion.

MR. LAVIN: Of course it was the Government's motion.

To say that a nolle somehow impli that Judge Judge dismissed it, that is not correct and it's never correct.

MS. ROSNER: We are relying on Judge Judd's factual finding in the minutes that the promise was made to Alessi, and he pled in reliance on it; and we are relying on the Government's own admission, Mr. Lavin, that when he pled to the superseding information, it was in satisfaction of that underlying indictment which he had been named in with Papa; it was purely through administrative convenience that the new information was drafted for Alessi.

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2	MR. LAVIN: Administrative? We haven't had
3	any proof on that.
4	THE COURT: Well, we can't answer the whole
5	thing. Let's leave it this way:
6	You two are going to agree what the stipulation
7	covers when you get that additional matter, and if you
8	can get that in to me, say, by next Tuesday, and with that
9	I would like each of you to give me a very brief memorandum
10	based on the stipulated facts, why you think it is covered
11	by a plea bargain, and, Mr. Lavin, why he does not think
12	it is covered by the plea bargain.
13	I think I know most of the authorities now
14	cited and the cases.
15	Now could you let me have that how long
16	would it take you?
17	MR. LAVIN: If we get everything in Tuesday
18	THE COURT: Can you get everything in Tuesday
19	or maybe Wednesday?
20	MR. ROSNER: I couldn't get a memorandum in,
21	Judge. I have a memorandum due Friday.
22	Could we have Friday of next week for the memo-
23	randum?
24	THE COURT: Do you have any objection to that?

MR. LAVIN: No.

MS. ROSNER: Thank you.

THE COURT: Because I want to get this thing resolved, and if I deny your motion I suppose you are going to run up to the Court of Appeals. I am sure you are.

Put I would like to have that disposed of as soon as I can.

MS. ROSNER: Judge, just so the record is clear and Mr. Lavin understands, I hate to put all the additional facts into the record.

Alessi at the time of this indictment with
Papa had another indictment in Nassau County charging
narcotics violations. The Eastern District plea to the
conspiracy count where he was named with Papa would not
have created a jeopardy situation with respect to the
Nassau County indictment; so they redrafted a new information specifically designed to cover the Nassau County
situation so that Alessi's plea before Judge Travia would
be a bar to the Nassau County prosecution. That's why
he pled to an information and Papa pled to the conspiracy.
That's why I said administrative convenience.

Just so the record is complete, that's why it was done that way.

THE COURT: All right, let's leave it that way, then.

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2	And perhaps if I decide against you	I would
3	like to get an expedited appeal. I don't want this	thing
4	to run too long.	
5	MS. ROSNER: I can fully understand	that,
6	your Honor.	
7	THE COURT: All right, thank you.	
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May 28 1976

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